TEXAS REGISTER

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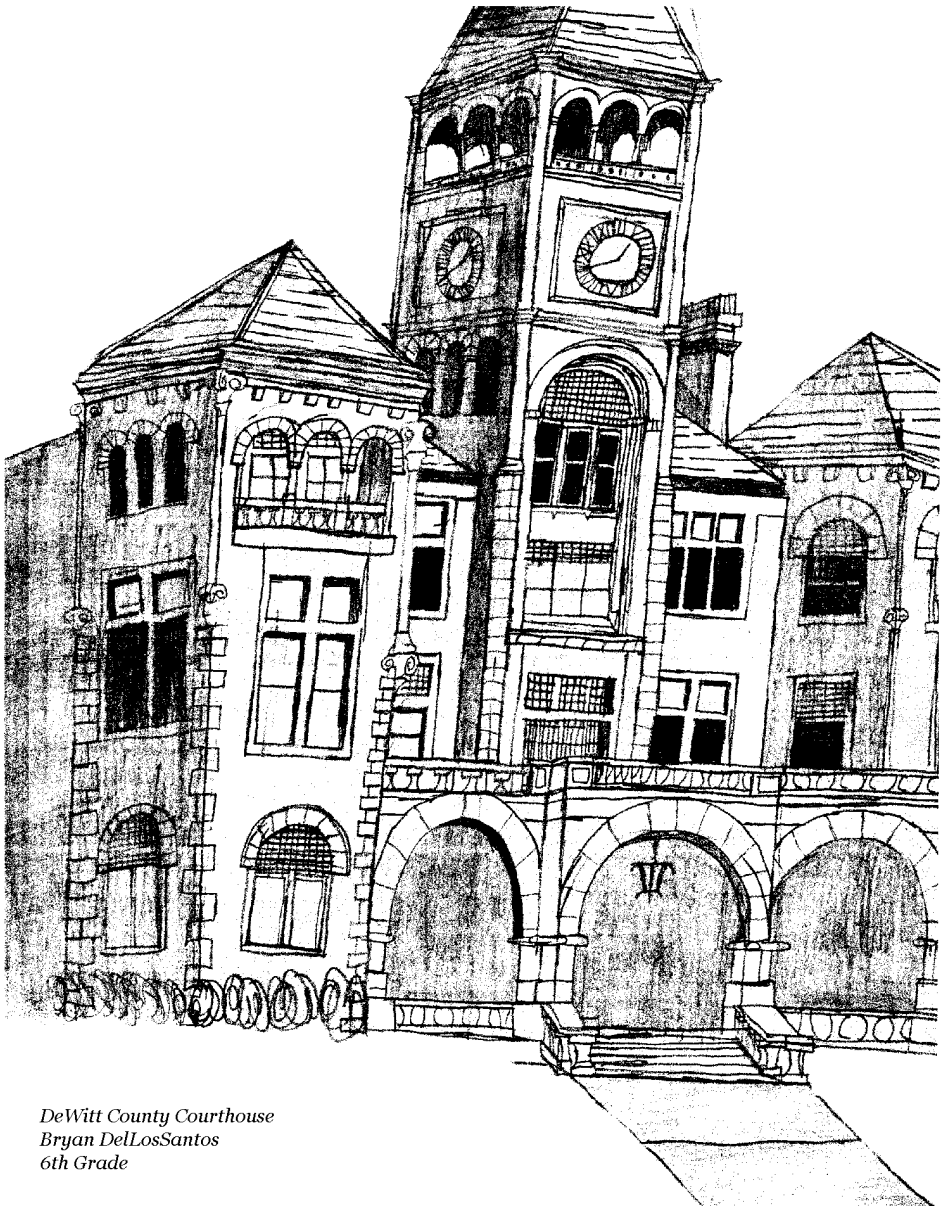

DeWitt County Courthouse
Bryan DelLosSantos
6th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

ADOPTED RULES

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for October 19, 2005

Appointed as Judge of the 412th Judicial District Court, Brazoria County, for a term until the next General Election and until his successor shall be duly elected and qualified, W. Edwin Denman of Lake Jackson.

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2010, Nancy Meredith Seliger of Amarillo.

Appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2009, Donald Ray Counts, M.D. of Austin (replacing Everett Heinze of Austin whose term expired).

Appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2011, Chung-Hwei Chernly of Hurst (replacing Dee Ann Newbold of Austin whose term expired).

Appointments for October 24, 2005

Appointed to the Teacher Retirement System of Texas, Board of Trustees for a term to expire August 31, 2011, Linus D. Wright of Dallas (Reappointed).

Appointed to the Teacher Retirement System of Texas, Board of Trustees for a term to expire August 31, 2011, Philip M. Mullins of Austin (replacing Mary Baker whose term expired).

Appointments for October 25, 2005

Appointed to the Interagency Council for Genetic Services for a term to expire September 1, 2007, Janet M. Shephard of Brenham (Reappointed).

Appointed to the Interagency Council for Genetic Services for a term to expire September 1, 2007, Robert D. Cleveland of Houston (Reappointed).

Appointments for October 27, 2005

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2011, Kimberly Hernandez of El Paso (replacing Jamie Ward of Bullard whose term expired).

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2011, Dorinda N. Noble, Ph.D. of Kyle (replacing John Roberts of San Marcos whose term expired).

Appointments for October 28, 2005

Appointed to the Texas A&M University System, Board of Regents for a term to expire February 1, 2011, Ida Louise "Weisie" Clement Steen of San Antonio (replacing R.H. "Steve" Stevens of Houston whose term expired).

Rick Perry, Governor

TRD-200505051

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0407-GA

Requestor:

The Honorable Norma Chavez

Chair, Committee on Border and International Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the state or its political subdivisions may regulate international border crossings by persons under the age of 18 years (RQ-0407-GA)

Briefs requested by December 5, 2005

RQ-0408-GA

Requestor:

The Honorable Galen Ray Sumrow

Rockwall County Criminal District Attorney

Rockwall County Government Center

1101 Ridge Road, Suite 105

Rockwall, Texas 75087

Re: Whether a member of a city council holds a "lucrative office" within article III, section 19, Texas Constitution, under particular circumstances (RQ-0408-GA)

Briefs requested by December 5, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200505165
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: November 9, 2005

♦ ♦ ♦

Opinions

Opinion No. GA-0369

Mr. Robert Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Post Office Box 4200

Austin, Texas 78765-4200

Re: Whether House Bill 3507 and Senate Bill 282 from the Seventy-eighth Legislature when read together create a conflict that was correctly interpreted by West in the 2004 edition of the Texas Occupations Code (RQ-0340-GA)

S U M M A R Y

The Seventy-eighth Legislature amended chapter 1301, Texas Occupations Code, with the enactment of House Bill 3507 and Senate Bill 282. Both bills recognized that in the event of conflict between them, the provisions of Senate Bill 282 would prevail. Generally, the provisions of the two bills are not antagonistic to each other. However, there are three instances where a provision of chapter 1301 is amended by both bills.

Of the three, only sections 1301.002 and 1301.258, as published by West in its 2004 edition of the Occupations Code, do not contain the full range of amendments from House Bill 3507. Because there is no conflict between the provisions of House Bill 3507 and Senate Bill 282 in their treatment of sections 1301.002 and 1301.258, the Occupations Code should be read to include the amendments contained in both bills. West's recently revised online version of section 1301.002 on Westlaw contains the full range of amendments from House Bill 3507. However, with respect to section 1301.258, West's online version on Westlaw still incorrectly omits the amendments made by House Bill 3507.

Opinion No. GA-0370

The Honorable Greg Lowery

Wise County Attorney

Wise County Courthouse, Room 300

Decatur, Texas 76234

Re: Whether a statutory county court judge may recover back pay from the county, which failed to pay the judge the salary to which the judge was entitled under Government Code section 25.0005 (RQ-0341-GA)

S U M M A R Y

A judge's action for back pay under section 25.0005 of the Government Code is subject to the four-year statute of limitations that section 16.004(a)(3) of the Civil Practice and Remedies Code sets forth. A court likely would find that a judge should have discovered, through the exercise of reasonable diligence, the salary he was due. But whether a particular injury is a type that is inherently undiscoverable is a question requiring the resolution of fact questions that are beyond the scope of the opinion process. In addition, whether the County's conduct in a particular case constitutes fraud or fraudulent concealment is also a question requiring an examination of evidence and the resolution of fact questions.

Governmental immunity bars a suit against a county for back pay brought by a judge who did not receive the compensation to which he was entitled under section 25.0005(a).

Opinion No. GA-0371

Mr. Jerry Clark

Executive Vice President and General Manager

Sabine River Authority of Texas

Post Office Box 579

Orange, Texas 77631

Re: Whether the Sabine River Authority of Texas may sell surplus real property to an adjoining landowner without holding a public sale (RQ-0342-GA)

S U M M A R Y

In the event the Sabine River Authority board of directors determines that land is "surplus and is not needed" by the river authority, section 49.226 of the Water Code authorizes the river authority to sell the land by private sale. Because the transaction is governed by section 49.226, public sale requirements prescribed by section 272.001 of the Local Government Code would not apply. Thus, the Sabine River Authority may sell such surplus real property to an adjoining landowner without holding a public sale.

Opinion No. GA-0372

The Honorable Robert F. Vititow

Rains County Attorney

220 West Quitman

Post Office Box 1075

Emory, Texas 75440

Re Whether a county clerk may collect a court reporter service fee under section 51.601 of the Government Code if the county court has not appointed an official court reporter (RQ-0343-GA)

S U M M A R Y

A county clerk may not collect a court reporter service fee under section 51.601 of the Government Code if the county court has not appointed an official court reporter.

Opinion No. GA-0373

The Honorable Troy Fraser

Chair, Committee on Business and Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a school district that contracts with a tax appraisal district to collect school district taxes may offer taxpayers an early payment discount (RQ-0344-GA)

S U M M A R Y

Prior to its amendment, Tax Code section 31.05(a) did not authorize an independent school district to adopt an early payment discount when the school district did not collect its own taxes but instead had contracted for the county appraisal district to collect school district taxes. Under section 31.05(a), as amended during the regular session of the 79th Legislature, an independent school district may offer such a discount regardless of the entity that collects its taxes; whether the discount applies to the 2005 tax year or the 2006 tax year depends on whether the district's tax bills were mailed on or after September 1, 2005.

Attorney General Opinions GA-0225 (2004) and DM-171 (1992) are superseded in part by statute.

Opinion No. GA-0374

Shirley J. Neeley, Ed.D.

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether in light of House Bill 383 a school district employee may administer corporal punishment under a disciplinary policy adopted by the board of trustees (RQ-0369-GA)

S U M M A R Y

Section 151.001(e), Family Code, added by House Bill 383 in the Seventy-ninth Legislature, recognizes an affirmative right in the persons listed in the legislation to use reasonable corporal punishment to discipline a child. Section 151.001(e) is not a prohibition against the reasonable use of corporal punishment in schools.

Accordingly, a professional employee of a school district may administer corporal punishment to the extent permitted by section 9.62, Penal Code, section 22.0512, Education Code, and any school district policy. Moreover, a school district may adopt a policy authorizing corporal punishment without the permission of those persons listed in section 151.001(e).

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200505164
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: November 9, 2005

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO-465. The Texas Ethics Commission has been asked whether a non-judicial officeholder who is seeking a judicial office is required to file a single campaign finance report combining both non-judicial and judicial activity. (AOR-527)

SUMMARY

A non-judicial officeholder who becomes a judicial candidate is required to file two campaign finance reports, one reporting non-judicial activity and the other reporting judicial activity. Alternatively, a non-judicial officeholder who becomes a judicial candidate may select to file one report if: (1) in the description of an expenditure states whether an expenditure is for non-judicial activity, and (2) the total contributions maintained at the end of the reporting period states the amount attributed to non-judicial contributions and the amount attributed to judicial contributions.

EAO-466. Personal financial disclosure statement reporting requirements in regard to making or receiving a referral for compensation for legal services. (SP-9)

SUMMARY

The Ethics Commission will recommend that the legislature clarify §572.0252 of the Government Code because this statute is so vague as to be unenforceable.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes:

(1) Chapter 572, Government Code;

(2) Chapter 302, Government Code;

(3) Chapter 303, Government Code;

(4) Chapter 305, Government Code;

(5) Chapter 2004, Government Code;

(6) Title 15, Election Code;

(7) Chapter 36, Penal Code; and

(8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200505068
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: November 4, 2005

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER D. DISPUTE AND AUDIT OF BILLS BY INSURANCE CARRIERS

28 TAC §§133.301, 133.302, 133.304

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts on an emergency basis, to take immediate effect, amendments to §§133.301, 133.302, and 133.304, relating to medical billing timeframes. The amendments are necessary to implement portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The amendments will permit expedited compliance with statutory changes to the Texas Labor Code as a result of changes to §408.027 and new §408.0271. The amendments to §133.301 delete a sentence in subsection (a) regarding onsite audits to clarify that the timeframes apply to all audits; delete the criteria in subsection (c) that must be met for an insurance carrier to request additional documentation on a medical bill since a carrier may request additional documentation necessary to clarify a provider's charges at any time during the 45-day period; and change the timeframe a provider has to respond to a request for additional documentation to 15 days. In conformity with changes to §408.027 under HB 7, the amendments to §133.302 require an audit to be completed no later than the 160th day after receipt of the provider's medical bill, and changes the basis of the rule's applicability to medical bills with dates of service on or after September 1, 2005, the effective date of HB 7. The amendments to §133.304 change the definition of final action by deleting the reference to refund requests and revising the initial reimbursement associated with an audit to be consistent with HB 7. The various timeframes set forth in these sections are consistent with the timeframes established in HB 7. Amendments have also been made throughout the sections to update references and revise effective dates. These amendments are being adopted on an emergency basis simultaneously with the emergency adoption of amendments to §134.801 published in this issue of the *Texas Register*.

Pursuant to Sec. 8.005(e), HB 7, the Commissioner may adopt emergency rules and is not required to make the finding described by Government Code §2001.034(a).

The amendments are adopted on an emergency basis under the Labor Code §§408.027, 408.0271, 402.061, as well as Government Code §2001.034. Section 408.027 provides that a carrier may request additional documentation to clarify a provider's charges at any time during the 45-day period. Section 408.0271 permits carriers to request refunds when health care services provided to an injured employee are determined by the carrier to be inappropriate. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Government Code §2001.034 provides for the adoption of administrative rules on an emergency basis without notice and comment. In addition, Sec. 8.005(e) of HB 7 gives the Commissioner the authority to adopt emergency rules utilizing the procedures established in Government Code §2001.034 without making the finding described in subsection (a).

§133.301. Retrospective Review of Medical Bills.

(a) The insurance carrier shall retrospectively review all complete medical bills and pay for or deny payment for medical benefits in accordance with the Act, rules, and the appropriate Division [~~Commission~~] fee and treatment guidelines. The insurance carrier shall not retrospectively review the medical necessity of a medical bill for treatment(s) and/or service(s) for which the health care provider has obtained preauthorization under Chapter 134 of this title (relating to Benefits - Guidelines for Medical Services, Charges, and Payments). [~~The insurance carrier may conduct a retrospective review of a medical bill at the insurance carrier's location or through an onsite audit of the health care provider as provided by §133.302 and §133.303 of this title (relating to Preparation for an Onsite Audit and Onsite Audits).~~] The retrospective review may include examination for:

(1) compliance with the fee guidelines established by the Division [~~Commission~~];

(2) compliance with the treatment guidelines established by the Division [~~Commission~~];

(3) duplicate billing;

(4) upcoding and/or unbundling;

(5) billing for treatment(s) and/or service(s) unrelated to the compensable injury;

(6) billing for services not documented or substantiated, when documentation is required in accordance with Division [~~Commission~~] fee guidelines or rules in effect for the dates of service;

(7) accuracy of coding in relation to the medical record and reports;

(8) correct calculations; and/or

(9) provision of unnecessary and/or unreasonable treatment(s) and/or service(s).

(b) Neither the insurance carrier nor the carrier's agent shall change a billing code on a medical bill or reimburse treatment(s) and/or

service(s) at another billing code's value unless the insurance carrier contacts the sender of the bill and the sender agrees to the change.

(1) If the sender of the medical bill agrees to a specific change in a billing code, the insurance carrier shall make the change on the medical bill and use that code in the electronic transmission of the medical bill data to the Division [~~Commission~~] under §134.802 of this title (relating to Insurance Carrier [~~Carrier's Submission of~~] Medical Electronic Data Interchange [~~Bills~~] to the Commission).

(2) If the insurance carrier changes a billing code with the agreement of the sender, the insurance carrier shall maintain documentation regarding the manner in which the agreement was reached, the name and telephone number of the person who agreed to the change, and the date the agreement was reached.

[~~(c) An insurance carrier shall not request documentation on a medical bill unless:~~]

[~~(1) the documentation is required in accordance with the Commission fee guidelines or rules in effect for the dates of service; or~~]

[~~(2) the health care provider has not filed required medical reports that the insurance carrier needs to conduct a retrospective review; or~~]

[~~(3) the employee has not selected a treating doctor; or~~]

[~~(4) the employee seeks emergency treatment, and the insurance carrier requires documentation of the emergency treatment.~~]

(c)[~~(d)~~] An insurance carrier's request for additional documentation shall:

(1) clearly indicate the specific documentation the insurance carrier is requesting;

(2) indicate the specific reason for which the insurance carrier is requesting the information;

(3) include a copy of the bill for which the insurance carrier is requesting the additional documentation;

(4) be made by, facsimile, mutually agreed upon electronic transmission, or telephone; if by telephone, the insurance carrier shall document the name and telephone number of the person who supplied the information; and

(5) be made not later than the 45th [~~14th~~] day after receipt of the medical bill.

(d) [~~(e)~~] The insurance carrier shall maintain a copy of the request for additional documentation or be able to electronically reproduce it and shall maintain documentation of the date the insurance carrier sent the request to the health care provider.

(e) [~~(f)~~] A health care provider shall submit to the insurance carrier, no later than the 15th [~~14th~~] day after receipt of a request for additional documentation in accordance with this section, any additional documentation, records, or information related to the treatment(s) and/or service(s) rendered, or the charges billed. If the insurance carrier requests documentation that the health care provider does not have, the health care provider shall send the insurance carrier a notice to that effect within 15 [~~14~~] days after the date the health care provider received the request. The health care provider shall send documentation and notice provided by this subsection to the insurance carrier by facsimile or mutually agreed upon electronic transmission unless the requested documentation cannot be sent by those media, in which case the health care provider shall send the documentation by mail or personal delivery.

(f) [~~(g)~~] A health care provider's failure to timely provide an insurance carrier with additional documentation submitted in accordance with this section does not extend the amount of time the insurance carrier has to make payment or deny payment on a bill in accordance with §133.304 of this title (relating to MedicalPayments and Denials [~~of Medical Bills~~]).

(g) [~~(h)~~] This rule shall apply to all dates of service on or after September 1, 2005 [~~July 15, 2000~~].

§133.302. Preparation for an Onsite Audit.

(a) An insurance carrier may perform an onsite audit of a health care provider that has billed the insurance carrier, if the insurance carrier provides a notice of intent to perform an onsite audit in accordance with subsections (c) and (d) of this section.

(b) An onsite audit may focus on workers' compensation claims in which the insurance carrier:

(1) is currently conducting retrospective review of a medical bill the health care provider submitted for payment; or.

(2) previously took final action in accordance with §133.304 of this title (relating to Medical Payments and Denials) [~~of Medical Bills), but no later than the one year from the date of service on the medical bill~~].

(c) If an insurance carrier decides to conduct an onsite audit, the insurance carrier shall [~~provide notice required by subsections (a) and (d) not later than~~]:

(1) provide notice required by subsection (a) of this section not later than the 45th day after the date the insurance carrier received the complete medical bill; and [~~if the insurance carrier has not yet taken final action in accordance with §133.304; or~~]

(2) complete the audit not later than the 160th day after the date of receipt by the insurance carrier of the health care provider's medical bill and pay, reduce, or deny [~~the 180th day after the date the insurance carrier took final action on the medical bill~~] in accordance with §133.304 of this title.

(d) - (e) (No change.)

(f) This rule shall apply to all auditsof medical bills with dates of services [~~performed~~] on or after September 1, 2005 [~~July 15, 2000~~].

§133.304. Medical Payments and Denials.

(a) Except as provided in subsection[~~subsections~~] (d) [~~and (e)~~] of this section, an insurance carrier shall take final action on a medical bill not later than the 45th day after the date the insurance carrier received a complete medical bill.

(b) Final action on a medical bill includes one or more of the following:

(1) sending payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §133.1(8) of this title (relating to Definitions for Chapter 133 - Benefits--Medical Benefits); or

(2) denying a charge on the medical bill.[~~; or~~]

[~~(3) requesting reimbursement for an overpayment.~~]

(c) At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Division [~~Commission~~], the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Division's [~~Commission's~~] instructions, and shall provide sufficient explanation

to allow the sender to understand the reason(s) for the insurance carrier's action(s). A generic statement that simply states a conclusion such as "not sufficiently documented" or other similar phrases with no further description of the reason for the reduction or denial of payment does not satisfy the requirements of this section. The insurance carrier shall maintain documentation of the date it sent the explanation of benefits, and shall either maintain a copy of the explanation of benefits or be able to electronically reproduce it. The explanation of benefits may be printed on the insurance carrier's letterhead but must include all language required by the Division [~~Commission~~].

(d) If the insurance carrier performs an audit the insurance carrier shall: [~~If, on the 45th day after the date of receipt of a complete bill, the insurance carrier has notified a health care provider of its intent to perform an onsite audit in accordance with §133.302 of this title (relating to Preparation for an Onsite Audit), and the insurance carrier has not completed the audit in accordance with §133.303 of this title (relating to Onsite Audits), the insurance carrier shall pay no less than 50% of the maximum allowable reimbursement amounts provided by the Commission fee guidelines in effect for the dates of service being audited, or 50% of the amount billed for treatment(s) and/or service(s) without an established maximum allowable reimbursement, and shall include the explanation of benefits with the payment.~~]

(1) no later than the 45th day after the date of receipt of the medical bill, pay no less than 85% of:

(A) the maximum allowable reimbursement amounts provided by the Division fee guidelines in effect for the dates of service being audited;

(B) the contracted amount; or

(C) the amount billed for treatment(s) and/or service(s) without an established maximum allowable reimbursement; and

(2) not later than the 160th day after the date of receipt of the medical bill, make a final determination and pay, reduce, or deny the audited medical bill.

~~[(e) Within seven days of completing an onsite audit performed in accordance with §133.303, the insurance carrier shall take final action on the bill, consistent with the results of the audit.]~~

(e) [~~(f)~~] The insurance carrier shall send a copy of the explanation of benefits to the injured employee at the same time it is sent to the sender of the bill if the insurance carrier has reduced or denied payment for a charge on the bill because the insurance carrier believes that treatment(s) and/or service(s) were:

(1) unreasonable and/or unnecessary;

(2) provided by a health care provider other than

(A) the treating doctor selected in accordance with §408.022 of the Texas Labor Code,

(B) a health care provider that the treating doctor has chosen as a consulting or referral provider,

(C) a doctor performing a required medical examination in accordance with §126.5 of this title (relating to Procedure for Requesting Required Medical Examinations) and §126.6 of this title (relating to Order for Required Medical Examination [~~Examinations~~]), or

(D) a doctor performing a designated doctor examination in accordance with §130.6 of this title (relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings [~~: General Provisions~~]); or

(3) unrelated to the compensable injury, in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements).

(f) [~~(g)~~] If an insurance carrier denies or reduces payment for a medical bill based on a peer review, the health care provider who conducts the peer review shall:

(1) be a licensed health care provider, as defined in §401.011 of the Texas Labor Code, of the same or similar specialty as the prescribing or performing health care provider;

(2) be licensed to prescribe or perform the category of treatment(s) and/or service(s) under review; and

(3) if a doctor, must not have been removed from the Division's [~~Commission's~~] approved doctor list.

(g) [~~(h)~~] When an insurance carrier reduces or denies payment for treatment(s) and/or service(s) on the recommendation of a peer review as described in subsection (f) [~~(g)~~] of this section, the insurance carrier shall provide a copy of the peer reviewer's report to the sender of the bill, with the explanation of benefits. The report shall include:

(1) the peer reviewer's professional discipline,

(2) the peer reviewer's specialty information, and

(3) the name and professional license number of the peer reviewer.

(h) [~~(i)~~] When the insurance carrier pays a health care provider for treatment(s) and/or service(s) for which theDivision [~~Commission~~] has not established a maximum allowable reimbursement, the insurance carrier shall:

(1) develop and consistently apply a methodology to determine fair and reasonable reimbursement amounts to ensure that similar procedures provided in similar circumstances receive similar reimbursement;

(2) explain and document the method it used to calculate the rate of pay, and apply this method consistently;

(3) reference its method in the claim file; and

(4) explain and document in the claim file any deviation for an individual medical bill from its usual method in determining the rate of reimbursement.

(i) [~~(j)~~] An insurance carrier shall have filed, or shall concurrently file, the applicable notice required by §409.021 of the Texas Labor Code, §124.2 [~~of this title~~] and §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) if the insurance carrier reduces or denies payment for treatment(s) and/or service(s) based solely on the carrier's belief that:

(1) the injury is not compensable;

(2) the insurance carrier is not liable for the injury due to lack of insurance coverage; or

(3) the condition for which the treatment(s) and/or service(s) was provided was not related to the compensable injury.

(j) [~~(k)~~] If the sender of the bill is dissatisfied with the insurance carrier's final action on a medical bill, the sender may request that the insurance carrier reconsider its action. The sender shall submit the request for reconsideration by facsimile or mutually agreed upon electronic transmission unless the request cannot be sent by those media, in which case the sender shall send the request by mail or personal delivery; the request shall include:

(1) a copy of the complete medical bill that the health care provider is requesting the insurance carrier to reconsider,

(A) clearly marked with the statement "REQUEST FOR RECONSIDERATION," and

(B) with the identical codes and charges that are on the original medical bill;

(2) a copy of the explanation of benefits; and

(3) a claim-specific substantive explanation that enables the insurance carrier to understand the sender's position. This explanation shall rebut the insurance carrier's reason for its action as indicated on the explanation of benefits. A generic statement that simply states a conclusion such as "insurance carrier improperly reduced the bill" or other similar phrases with no further description of the factual basis for the sender's position does not satisfy the requirements of this section.

(k) [~~(l)~~] An insurance carrier shall treat a request for reconsideration as an incomplete medical bill under §133.300 of this title (relating to Insurance Carrier Receipt of Medical Bills from Health Care Providers) if the request is not submitted in accordance with subsection (j) [~~(k)~~] of this section. Within 21 days of receiving the request for reconsideration, the insurance carrier shall take final action on the medical bill as described in subsection (b) of this section, provided the request for reconsideration meets the requirements of subsection(j) [~~(k)~~] of this section.

(l) [~~(m)~~] The sender of a medical bill may request medical dispute resolution in accordance with §133.305 of this title (relating to Medical Dispute Resolution - General) if the sender of a medical bill has requested reconsideration in accordance with this section and:

(1) after reconsideration, the sender is still dissatisfied with the insurance carrier's action on the medical bill; or

(2) the sender has not received the insurance carrier's response to the request for reconsideration by the 28th day after the date the request for reconsideration was sent to the insurance carrier.

(m) [~~(n)~~] Health care providers, injured employees, employers, attorneys, and other participants in the system shall not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits explaining its actions except as provided in subsection (j) [~~(k)~~] of this section and §133.305 of this title (relating to Medical Dispute Resolution - General).

(n) [~~(o)~~] A health care provider who receives a request for the refund of payment for medical treatment(s) and/or service(s) shall, by the 45th day after receipt of the request:

(1) pay the request; or

(2) submit to the insurance carrier a specific explanation regarding the reason the health care provider has failed to make the payment requested. A generic statement that simply states a conclusion such as "insurance carrier cited the wrong ground rule" or other similar phrases with no further description of the factual basis for the health care provider's position does not satisfy the requirements of this section. The health care provider shall send the explanation by facsimile or mutually agreed upon electronic transmission unless the explanation cannot be sent by those media, in which case the health care provider shall send the explanation by mail or personal delivery.

(o) [~~(p)~~] An insurance carrier may request medical dispute resolution in accordance with §133.305 of this title if the insurance carrier did not earlier make full payment on the medical bill in accordance with §413.031 of the Texas Labor Code, the insurance carrier has requested a refund under this section, and the health care provider:

(1) failed to make payment by the 45th [~~60th~~] day after the date the insurance carrier sent the request for refund; or

(2) failed to pay the amount of refund requested, including interest, if applicable.

(p) [~~(q)~~] All payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill shall include interest calculated in accordance with §134.803 of this title (relating to Calculating Interest for Late Payment on Medical Bills and Refunds). Interest shall be paid from the 60th day after the date of receipt of the complete medical bill to the date of payment, without order of the Division [~~Commission~~].

(q) [~~(r)~~] All refunds requested by the insurance carrier and paid by a health care provider on or after the 60th day after the date the health care provider received the request for the refund shall include interest calculated in accordance with §134.803 of this title. Interest shall be paid from the 60th day after the date of receipt of the request for refund to the date of payment.

(r) [~~(s)~~] This rule shall apply to all dates of service on or after September 1, 2005 [~~July 15, 2000~~].

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 3, 2005.

TRD-200505061
A. Kaylene Ray
Director, Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective Date: November 3, 2005
Expiration Date: March 2, 2006
For further information, please call: (512) 804-4288

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CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.600

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts on an emergency basis amendments to §134.600, concerning preauthorization, concurrent review, and voluntary certification of health care. The amendments to §134.600 are necessary to implement portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The amendments will permit expedited compliance with statutory changes to the Texas Labor Code as a result of changes to §413.014 and new §408.0042. The changes affected by HB 7 include revisions to Texas Labor Code §413.014(c) requiring health care providers to seek preauthorization and concurrent review of physical and occupational therapy, and creation of new Texas Labor Code §408.0042(d) which requires health care providers to seek preauthorization of treatments for any injury or diagnosis not accepted as compensable by the insurance carrier following

a requested examination by the treating doctor. This section does not apply to networks certified under Insurance Code Chapter 1305 or political subdivisions with contractual relationships under Labor Code §504.053(b)(2). Subsection (f)(1) is amended to address Labor Code §408.0042(d). Subsection (h) is amended to add physical and occupational therapy services to the list of non-emergency health care requiring preauthorization. Physical and occupational therapy services will require preauthorization when rendered on or after December 1, 2005. The amendments provide that preauthorization is not required for the first two physical or occupational therapy visits following the evaluation when certain conditions are met. These provisions have been included to promote the timely initiation of rehabilitation services following injury or surgery. Postponement of medically necessary rehabilitative care can lead to delays in recovery, suboptimal stay-at-work and return-to-work outcomes, and additional claim costs. Subsection (i) is amended to include physical and occupational therapy services in the list of health care requiring concurrent review. Throughout the section, the term Commission has been changed to either Division or Commissioner, as appropriate.

Pursuant to Sec. 8.005(e), HB 7, the Commissioner may adopt emergency rules and is not required to make the finding described by Government Code §2001.034(a).

The amendment is adopted on an emergency basis under the Labor Code §§413.014, 408.0042, 402.061, as well as Government Code §2001.034. Section 413.014(c) requires health care providers to seek preauthorization and concurrent review of physical and occupational therapy. Section 408.0042(d) requires health care providers to seek preauthorization of treatments for any injury or diagnosis not accepted as compensable by the insurance carrier following a requested examination by the treating doctor. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Government Code §2001.034 provides for the adoption of administrative rules on an emergency basis without notice and comment. In addition, Sec. 8.005(e) of HB 7 gives the Commissioner the authority to adopt emergency rules utilizing the procedures established in Government Code §2001.034 without making the finding described in subsection (a).

§134.600. Preauthorization, Concurrent Review, and Voluntary Certification of Health Care.

(a) The following words and terms, used in this section shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Final adjudication: the Commissioner [~~commission~~] has issued a final decision or order that is no longer subject to appeal by either party;

(4) - (6) (No change.)

(b) The carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (h) or (i) of this section, only when the following situations occur:

(A) - (C) (No change.)

(D) when ordered by the Commissioner [~~commission~~]; or

(2) per subsection (j) of this section, when voluntary certification was requested and payment agreed upon prior to providing the health care, for any health care not listed in subsection (h) of this section.

(c) - (e) (No change.)

(f) The carrier shall:

(1) approve or deny requests for preauthorization or concurrent review based solely upon the reasonable and necessary medical health care required to treat the injury, except as provided by Texas Labor Code §408.0042(d), regardless of:

(A) - (C) (No change.)

(2) - (8) (No change.)

(g) (No change.)

(h) The non-emergency health care requiring preauthorization includes:

(1) - (8) (No change.)

(9) work hardening and work conditioning services provided in a facility that has not been approved for exemption by the Division [~~commission~~]. A comprehensive occupational rehabilitation program or a general occupational rehabilitation program constitutes work hardening or work conditioning, respectively, for purposes of this section. All work hardening or work conditioning programs initiated on or after January 1, 2004 and prior to March 15, 2004, are subject to preauthorization and concurrent review. (For Division[~~commission~~] exemption approval for programs initiated on or after March 15, 2004, facilities must submit documentation of current program accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) to the Division[~~commission~~]. Division[~~Commission~~] exempted programs and non-exempted programs are subject to Division [~~commission~~] verification and audit, and upon request shall submit specified information in the form and manner prescribed by the Division [~~commission~~].);

(10) - (12) (No change.)

(13) chemical dependency or weight loss programs; [~~and~~]

(14) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care; and

(15) physical and occupational therapy services rendered on or after December 1, 2005.

(A) Physical and occupational therapy services are those services listed in the Healthcare Common Procedure Coding System (HCPCS) Level I code range for Physical Medicine and Rehabilitation, but limited to:

(i) Modalities, both supervised and constant attendance;

(ii) Therapeutic procedures, excluding work hardening and work conditioning; and

(iii) Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code.

(B) Preauthorization is not required for the first two visits of physical or occupational therapy following the evaluation when such treatment is rendered within the first two weeks immediately following:

(i) the date of injury, or

(ii) a surgical intervention previously approved by the insurance carrier.

(i) The health care requiring concurrent review for an extension for previously approved services includes:

(1) - (5) (No change.)

(6) nursing home, convalescent, residential, and home health care services; [~~and~~]

(7) chemical dependency or weight loss programs; and [~~.~~]

(8) physical and occupational therapy services.

(j) (No change.)

(k) An increase or decrease in review and preauthorization controls may be applied to individual doctors or individual workers' compensation claims, by the Division [~~commission~~] in accordance with §408.0231(b)(4) of the Texas Labor Code and other sections of this title.

(l) The carrier shall maintain accurate records to reflect information regarding requests for preauthorization, or concurrent review approval/denial decisions, and appeals, if any. The carrier shall also maintain accurate records to reflect information regarding requests for voluntary certification approval/denial decisions. Upon request of the Division [~~commission~~], the carrier shall submit such information in the form and manner prescribed by the Division [~~commission~~].

(m) (No change.)

[~~(n) The effective date of this section is March 15, 2004. Requests for preauthorization submitted prior to March 15, 2004 shall be subject to the rule in effect at the time the request was submitted.~~]

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 3, 2005.

TRD-200505059
A. Kaylene Ray
Director, Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective Date: November 3, 2005
Expiration Date: March 2, 2006
For further information, please call: (512) 804-4288

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SUBCHAPTER I. PROVIDER BILLING PROCEDURES

28 TAC §134.801

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts on an emergency basis, to take immediate effect, amendments to §134.801, relating to medical billing timeframes. The amendments are necessary to implement portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The amendments will permit expedited compliance with statutory changes to the Texas Labor Code as a result of changes to §408.027 and new §408.0271. Based on the effective date of HB 7, a bifurcated system of medical billing timeframes will exist until July 31, 2006. Consequently, the amendments to §134.801 specify two timeframes after which a health care provider may not submit a medical bill depending on whether the date of service occurs on or before August 31, 2005 or on or after September 1, 2005. This section is being adopted on an emergency basis simultaneously with the emergency adoption of amendments to §§133.301, 133.302 and 133.304 published in this issue of the *Texas Register*.

Pursuant to Sec. 8.005(e), HB 7, the Commissioner may adopt emergency rules and is not required to make the finding described by Government Code §2001.034(a).

The amendment is adopted on an emergency basis under the Labor Code §408.027 and §402.061, as well as Government Code §2001.034. Section 408.027 now provides that a health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Government Code §2001.034 provides for the adoption of administrative rules on an emergency basis without notice and comment. In addition, Sec. 8.005(e) of HB 7 gives the Commissioner the authority to adopt emergency rules utilizing the procedures established in Government Code §2001.034 without making the finding described in subsection (a).

§134.801. Submitting Medical Bills for Payment.

(a) The health care provider shall submit all medical bills to the insurance carrier unless the injured employee's employer has indicated a willingness to pay the medical bill(s), and the health care provider elects to bill the employer. If the health care provider bills the employer the health care provider shall submit a copy of the bill to the carrier and shall state the following in bold type: "THIS IS ONLY AN INFORMATION COPY, IT IS NOT A REQUEST FOR PAYMENT."

(b) A health care provider who elects to submit medical bills to an employer waives, for the duration of the election period, the rights to:

(1) prompt payment, as provided by §408.027 of the Texas Labor Code;

(2) interest for delayed payment as provided by §413.019 of the Texas Labor Code; and

(3) Division-provided [~~Commission-provided~~] medical dispute resolution as provided by §413.031 of the Texas Labor Code.

(c) A health care provider shall not submit a medical bill later than:

(1) the first day of the eleventh month after the date the services are provided, for services provided on or before August 31, 2005; or

(2) the 95th day after the date the services are provided, for services provided on or after September 1, 2005.

(d) If the injured employee, the employee's representative, or the Division [~~Commission~~] requests an information copy of the medical bill, the health care provider shall send, at no cost, a copy of the medical bill indicating the identical codes and charges from the original medical bill. Information copies shall state the following in bold type: "THIS IS ONLY AN INFORMATION COPY, IT IS NOT A REQUEST FOR PAYMENT."

(e) The health care provider that provided the treatment(s) and/or service(s) shall submit its own bill, unless:

(1) The health care provider employs a billing service to perform the solely administrative function of submitting bills for the health care provider,

(2) The health care provider is providing treatment(s) and/or service(s) as part of an interdisciplinary program, in accordance with the Division [~~Commission~~] fee guidelines in effect for the dates of service,

(3) the health care provider is submitting a bill in accordance with the pathology ground rules of Division [~~Commission~~] fee guidelines in effect for the dates of service, or

(4) the treatment(s) and/or service(s) was provided by a unlicensed [~~nonlicensed~~] individual under the direct supervision of a licensed health care provider, in which case the supervising health care provider shall submit the bill.

(f) A health care provider or other entity, except as described in subsections (e) [~~(f)~~] and (h) of this section, may not submit a bill for treatment(s) and/or service(s) the health care provider did not provide.

(g) Any entity, including a health care provider, that submits a bill for a health care provider shall:

(1) submit the bill for an amount that does not exceed the health care provider's usual and customary charge for the treatment(s) and/or service(s) provided in accordance with §413.011 of the Texas Labor Code,

(2) submit the bill in the name and license number of the licensed health care provider that provided the treatment(s) and/or service(s) or that provided direct supervision of an unlicensed [~~unlicenced~~] individual that provided the treatment(s) and/or service(s), and

(3) remit to the health care provider that provided the treatment(s) and/or service(s) the full amount that the insurance carrier reimburses for the treatment(s) and/or service(s).

(h) - (i) (No change.)

[~~(j) This rule shall apply to all dates of service on or after July 15, 2000.~~]

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 3, 2005.

TRD-200505060
A. Kaylene Ray
Director, Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective Date: November 3, 2005
Expiration Date: March 2, 2006
For further information, please call: (512) 804-4288

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Department of Information Resources (department) proposes new 1 TAC Chapter 202, §202.28 and §202.78 to address the need to remove data from any associated storage device prior to the sale or transfer of the data processing equipment. The department also proposes amendments to §§202.1, 202.25, and 202.75 to add requirements to address security issues related to wireless access to state systems, conducting vulnerability assessments, clarify language and correct grammar.

The proposed amendments and new sections underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements.

Bill Perez, Security Division Director for the department, has determined that there will be no fiscal implications for state or local government if the amendments and new sections are adopted. The public benefit of the amendments and new sections is that sensitive and confidential information, some of which could affect individual's privacy, will be sanitized from state agency computer equipment before the equipment is removed from service.

Mr. Perez believes there will be no different effect on small businesses than there is on large businesses since the rules are inapplicable to businesses, and that there is no additional anticipated economic cost to persons if the amendments and new sections are adopted.

Comments on the proposal may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

SUBCHAPTER A. DEFINITIONS

1 TAC §202.1

The amendments are proposed under §2054.130 and §2054.052(a), Texas Government Code.

The amendments are promulgated to implement §2054.130, Texas Government Code, which requires the department to adopt rules on the removal of data prior to the sale or transfer of data processing equipment, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§202.1. Applicable Terms and Technologies for Information Security.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (11) (No change.)

(12) Restricted Personal Information--Includes an individual's social security number, or data protected under state or federal law (e.g., financial, medical or student data).

(13) Sanitized--Overwriting data using software tools and procedures to comply with the U.S. Department of Defense 5220.22-M standard for disk-sanitization. For specific types storage media see Department of Defense 5220.22-M §8-500. Software and Data, Table 1 Clearing and Sanitization Data Storage.

(14) [~~(12)~~] Security Incident--An event which results in unauthorized access, loss, disclosure, modification, disruption, or destruction of information resources whether accidental or deliberate.

(15) [~~(13)~~] Security Risk Analysis--The process of identifying and documenting vulnerabilities and applicable threats to information resources.

(16) [~~(14)~~] Security Risk Assessment--The process of evaluating the results of the risk analysis by projecting losses, assigning levels of risk, and recommending appropriate measures to protect information resources.

(17) [~~(15)~~] Security Risk Management--Decisions to accept exposures or to reduce vulnerabilities.

(18) Storage Device--Any fixed or removable device that contains data and maintains the data after power is removed from the device.

(19) [~~(16)~~] Test--A simulated or documented "real-live" incident for which records are kept of the incident.

(20) [~~(17)~~] User of an Information Resource--An individual or automated application authorized to access an information resource in accordance with the owner-defined controls and access rules.

(21) Vulnerability Assessment--A measurement of vulnerability which includes the susceptibility of a particular system to a specific attack and the opportunities available to a threat agent to mount that attack.

(22) [~~(18)~~] Vulnerability Report--A computer related report containing information described in §2054.077(b), Government Code, as that section may be amended from time to time.

(23) Wireless Access--Using one or more of the following technologies to access the information resources systems of a state agency or institution of higher education:

(A) Wireless Local Area Networks--Based on the IEEE 802.11 family of standards.

(B) Wireless Personal Area Networks--Based on the Bluetooth and/or InfraRed (IR) technologies.

(C) Wireless Handheld Devices--Includes text-messaging devices, Personal Digital Assistant (PDAs), and smart phones.

(24) Wireless Security Guidelines--The National Institute of Standards and Technology Special Publication 800-48, Wireless Network Security 802.11, Bluetooth and Handheld Devices.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2005.

TRD-200504999
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 936-6448

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SUBCHAPTER B. SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §202.25, §202.28

The amendments and new section are proposed under §2054.130 and §2054.052(a), Texas Government Code.

The amendments and new section are promulgated to implement §2054.130, Texas Government Code, which requires the department to adopt rules on the removal of data prior to the sale or transfer of data processing equipment, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§202.25. Information Resources Security Safeguards.

The following Information Resources Security Safeguards should apply to state agencies based on documented security risk management decisions.

(1) [~~(a)~~] Access to information resources shall be managed to ensure authorized use.

(2) [~~(b)~~] Confidentiality of data and systems.

(A) [~~(1)~~] Confidential information shall be accessible only to authorized users. Information containing any confidential data shall be identified, documented, and protected in its entirety.

(B) [~~(2)~~] Information resources assigned from one state agency to another shall be protected in accordance with the conditions imposed by the providing state agency.

(3) [~~(c)~~] Identification/Authentication.

(A) [~~(1)~~] Each user of information resources shall be assigned a unique identifier except for situations where risk analysis demonstrates no need for individual accountability of users. User identification shall be authenticated before the information resources system may grant that user access.

(B) [~~(2)~~] A user's access authorization shall be appropriately modified or removed when the user's employment or job responsibilities within the state agency change.

(C) [~~(3)~~] Information resources systems shall contain authentication controls that comply with documented state agency security risk management decisions.

(D) [~~(4)~~] Information resources systems which use passwords shall be based on industry best practices on password usage and documented state agency security risk management decisions.

(E) [~~(5)~~] For electronic communications where the identity of a sender or the contents of a message must be authenticated, the use of digital signatures is encouraged. Agencies should refer to guidelines and rules issued by the department for further information. (Ref. 1 T.A.C., Chapter 203. Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" that are available at http://www.dir.state.tx.us./UETA_Guideline.htm.). [~~http://www.dir.state.tx.us/standards/UETA_Guideline.htm)~~].)

(4) [~~(d)~~] Encryption. Encryption for storage and transmission of information shall be used based on documented state agency security risk management decisions.

(5) [~~(e)~~] Auditing.

(A) [~~(1)~~] Information resources systems must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, modification of, or effect the release of confidential information.

(B) [~~(2)~~] Appropriate audit trails shall be maintained to provide accountability for updates to mission critical information, hardware and software and for all changes to automated security or access rules.

(C) [~~(3)~~] Based on the security risk assessment, a sufficiently complete history of transactions shall be maintained to permit an audit of the information resources system by logging and tracing the activities of individuals through the system.

(6) [~~(f)~~] Systems development, acquisition, and testing.

(A) [~~(1)~~] Test functions shall be kept either physically or logically separate from production functions. Copies of production data shall not be used for testing unless the data has been declassified or unless all state and independent contractor employees involved in testing are otherwise authorized access to the data.

(B) [~~(2)~~] Information security and audit controls shall be included in all phases of the system development lifecycle or acquisition process.

(C) [~~(3)~~] All security-related information resources changes shall be approved by the owner through a quality assurance process. Approval must occur prior to implementation by the state agency or independent contractors.

(7) [~~(g)~~] Security Policies. Each state agency head or his/her designated representative and information security officer shall create, distribute, and implement information security policies. The following policies are recommended; however, state agencies may elect not to implement some of the policies based on documented risk management decisions and business functions. These policies are not all inclusive and may be combined topically.

(A) [~~(1)~~] Acceptable Use--Defines scope, behavior, and practices; compliance monitoring pertaining to users of information resources.

(B) [~~(2)~~] Account Management--Establishes the rules for administration of user accounts.

(C) [~~(3)~~] Administrator/Special Access--Establishes rules for the creation, use, monitoring, control, and removal of accounts with special access privileges.

(D) [~~(4)~~] Backup/Recovery--Establishes the rules for the backup, storage, and recovery of electronic information.

(E) [~~(5)~~] Change Management--Establishes the process for controlling modifications to hardware, software, firmware, and documentation to ensure the information resources are protected against improper modification before, during, and after system implementation.

(F) [~~(6)~~] Email--Establishes prudent and acceptable practices regarding the use of email for the sending, receiving, or storing of electronic mail. Ensures compliance with applicable statutes, regulations, and mandates. The policy shall prohibit sending an individual's name along with any restricted personal information unless the data (individual's name and restricted personal information) is encrypted.

(G) [~~(7)~~] Incident Management--Describes the requirements for dealing with computer security incidents including prevention, detection, response, and remediation.

(H) [~~(8)~~] Internet/Intranet Use--Establishes prudent and acceptable practices regarding the use of the Internet and Intranet.

(I) [~~(9)~~] Intrusion Detection--Establishes requirements for auditing, logging, and monitoring to detect attempts to bypass the security mechanisms of information resources.

(J) [~~(10)~~] Network Access--Establishes the rules for the access and use of the network infrastructure.

(K) [~~(11)~~] Network Configuration--Establishes the rules for the maintenance, expansion, and use of the network infrastructure.

(L) [~~(12)~~] Password/Authentication--Establishes the rules for the creation, use, distribution, safeguarding, termination, and recovery of user authentication mechanisms.

(M) [~~(13)~~] Physical Access--Establishes the rules for the granting, control, monitoring, and removal of physical access to information resources.

(N) [~~(14)~~] Portable Computing--Establishes the rules for the use of mobile computing devices and their connection to the network.

(O) [~~(15)~~] Privacy--Methodologies used to establish the limits and expectations regarding privacy for the users of information resources.

(P) [~~(16)~~] Security Monitoring--Defines a process that ensures information resources security controls are in place, are effective, and are not being bypassed.

(Q) [~~(17)~~] Security Awareness and Training--Establishes the requirements to ensure each user of information resources receives adequate training on computer security issues.

(R) [~~(18)~~] Platform Hardening--Establishes the requirements for installing and maintaining the integrity of a platform in a secure fashion.

(S) [~~(19)~~] Authorized Software--Establishes the rules for software use on information resources.

(T) [~~(20)~~] System Development and Acquisition--Describes the security and business continuity requirements in the systems development and acquisition life cycle.

(U) [~~(21)~~] Vendor Access--Establishes the rules for vendor access to information resources, support services (Air Conditioning, Universal Power Supply, Power Distribution Unit, fire suppression, etc.), and vendor responsibilities for protection of information.

(V) [~~(22)~~] Malicious Code--Describes the requirements for prevention, detection, response, and recovery from the effects of malicious code (including but not limited to viruses, worms, Trojan Horses, and unauthorized code used to circumvent safeguards.)

(W) Wireless Access--Establishes the requirements and security restrictions for installing or providing access to the state agency information resources systems. Using the wireless security guidelines, the policy shall address the following topics areas:

(i) For Wireless Local Area Networks, ensure that Service Set Identifiers (SSID) values are changed from the manufacturer default setting. Some networks should not include organizational or location information in the SSID. Additional equipment configuration recommendations are included in the Wireless Security Guidelines.

(ii) Types of information that may be transmitted via wireless networks and devices with or without encryption. State agencies shall not allow access to confidential information, mission critical information or restricted personal information unless the cryptographic keys used are larger than 80-bits (See §3.3 Security of 802.11 Wireless LANs in the Wireless Security Guidelines).

(iii) Types of information that may be stored on laptop computers or wireless handheld devices with or without encryption.

(iv) Prohibit the installation of Wireless Personal Area Networks on state agency IT systems by individuals without the approval of the state agency information resources manager.

(X) Vulnerability Assessment--Establishes the requirements to conduct periodic information vulnerability assessments and specific focus areas for the assessments based on the results of the security risk assessment.

(8) [~~(h)~~] Perimeter Security Controls. Each state agency head or his/her designated representative and information security officer shall establish a perimeter protection strategy to include some or all of the following components.

(A) [~~(1)~~] DMZ (Demilitarized Zone)--The DMZ is the network area created between the public Internet and internal private network(s). This neutral zone is usually delineated by some combination of routers, firewalls, and bastion hosts. Typically, the DMZ contains devices accessible to Internet traffic, such as Web (HTTP) servers, FTP servers, SMTP (email) servers, and DNS servers.

(B) [~~(2)~~] Firewall--A system designed to prevent unauthorized access to or from a private network. Firewalls can be implemented in both hardware and software, or a combination of both and are used to prevent unauthorized Internet users from accessing private networks connected to the Internet, especially Intranets. They can also regulate traffic between networks within the same state agency.

(C) [~~(3)~~] Intrusion Detection System--Hardware and/or software which is installed on a network and compares network traffic and host log entries to the known and likely methods of attackers. Sus-

picious activities trigger administrator alarms and other configurable responses.

(D) [~~(4)~~] Router--A device or, in some cases, software in a computer, that determines the next network point to which a packet should be forwarded toward its destination. The router is connected to at least two networks and decides which way to send each information packet based on its current understanding of the state of the networks to which it is connected. A router is located at any gateway where one network meets another.

(9) [~~(i)~~] System Identification/Logon Banner. System identification/logon banners shall have warning statements that include the following topics:

(A) [~~(1)~~] Unauthorized use is prohibited;

(B) [~~(2)~~] Usage may be subject to security testing and monitoring;

(C) [~~(3)~~] Misuse is subject to criminal prosecution; and

(D) [~~(4)~~] No expectation of privacy except as otherwise provided by applicable privacy laws.

§202.28. Removal of Data from Data Processing Equipment.

(a) State agencies shall comply with the requirements and procedures addressing the sale or transfer of data processing equipment in §403.278, Government Code (between institutions of higher education or state agencies) or Chapter 2175, Government Code (for all other transactions).

(b) Prior to the sale or transfer of data processing equipment, to other than another Texas state agency or agent of the state, state agencies shall assess whether to remove data from any associated storage device.

(1) Electronic state records shall be destroyed in accordance with §441.185, Government Code. If the record retention period applicable for an electronic state record has not expired at the time the record is removed from data process equipment, the state agency shall retain a hard copy or other electronic copy of the record for the required retention period.

(2) If it is possible that restricted personal information, confidential information, mission critical information, intellectual property, or licensed software is contained on the storage device, the storage device should be sanitized or the storage device should be removed and destroyed. Additional information on sanitization tools and methods of destruction (that comply with the Department of Defense 5220.22-M standard) are provided in the "Sale or Transfer of Computers and Software" guidelines available at http://www.dir.state.tx.us.

(c) State agencies shall keep a record/form (electronic or hard copy) documenting the removal and completion of the process with the following information:

(1) date;

(2) description of the item(s) and serial number(s);

(3) inventory number(s);

(4) the process and sanitization tools used to remove the data or method of destruction; and

(5) the name and address of the organization the equipment was transferred to.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Renée Mauzy
General Counsel
Department of Information Resources
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For further information, please call: (512) 936-6448

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SUBCHAPTER C. SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §202.75, §202.78

The amendments and new section are proposed under §2054.130 and §2054.052(a), Texas Government Code.

The amendments and new section are promulgated to implement §2054.130, Texas Government Code, which requires the department to adopt rules on the removal of data prior to the sale or transfer of data processing equipment, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§202.75. Information Resources Security Safeguards.

The following Information Resources Security Safeguards should apply to state institutions of higher education based on documented security risk management decisions.

(1) - (2) (No change.)

(3) Identification/Authentication.

(A) - (D) (No change.)

(E) For electronic communications where the identity of a sender or the contents of a message must be authenticated, the use of digital signatures is encouraged. Institutions of higher education should refer to guidelines and rules issued by the department for further information. (Ref. 1 TAC Chapter 203. Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" that are available at http://www.dir.state.tx.us/UETA_Guideline.htm.) [~~http://www.dir.state.tx.us/standards/UETA_Guideline.htm.~~)]

(4) - (6) (No change.)

(7) Security Policies. Each institution of higher education head or his/her designated representative and information security officer shall create, distribute, and implement information security policies. The following policies are recommended; however, institutions of higher education may elect not to implement some of the policies based on documented security risk management decisions and business functions. These policies are not all inclusive and may be combined topically.

(A) - (E) (No change.)

(F) Email--Establishes prudent and acceptable practices regarding the use of email for the sending, receiving, or storing of electronic mail. Ensures compliance with applicable statutes, regulations, and mandates. The policy shall prohibit sending an individual's name and restricted personal information unless the data is encrypted.

(G) - (V) (No change.)

(W) Wireless Access--Establishes the requirements and security restrictions for installing or providing access to the institution of higher education information resources systems. Using the wireless security guidelines, the policy shall address the following topics areas:

(i) For Wireless Local Area Networks, ensure that Service Set Identifiers (SSID) values are changed from the manufacturer default setting. Some networks should not include organizational or location information in the SSID. Additional equipment configuration recommendations are included in the Wireless Security Guidelines.

(ii) Types of information that may be transmitted via wireless networks and devices with or without encryption. Institutions of higher education shall not allow access to confidential information, mission critical information or restricted personal information unless the cryptographic keys used are larger than 80-bits (See §3.3 Security of 802.11 Wireless LANs in the Wireless Security Guidelines).

(iii) Types of information that may be stored on laptop computers or wireless handheld devices with or without encryption.

(iv) Prohibit the installation of Wireless Personal Area Networks on institution of higher education IT systems by individuals without the approval of the institution of higher education information resources manager.

(X) Vulnerability Assessment--Establishes the requirements to conduct periodic information vulnerability assessments and specific focus areas for the assessments based on the results of the security risk assessment.

(8) - (9) (No change.)

§202.78. Removal of Data from Data Processing Equipment.

(a) Institutions of higher education shall comply with the requirements and procedures addressing the sale or transfer of data processing equipment in §403.278, Government Code (between institutions of higher education or state agencies) or Chapter 2175, Government Code (for all other transactions).

(b) Prior to the sale or transfer of data processing equipment institutions of higher education shall assess whether to remove data from any associated storage device.

(1) Electronic state records shall be destroyed in accordance with §441.185, Government Code. If the record retention period applicable for an electronic state record has not expired at the time the record is removed from data process equipment, the institution of higher education shall retain a hard copy or other electronic copy of the record for the required retention period.

(2) If it is possible that restricted personal information, confidential information, mission critical information, intellectual property, or licensed software is contained on the storage device, the storage device should be sanitized or the storage device should be removed and destroyed. Additional information on sanitization tools and methods of destruction (that comply with the Department of Defense 5220.22-M standard) are provided in the "Sale or Transfer of Computers and Software" guidelines available at http://www.dir.state.tx.us.

(c) Institutions of higher education shall keep a record/form (electronic or hard copy) documenting the removal and completion of the process with the following information:

(1) date;

(2) description of the item(s) and serial number(s);

(3) inventory number(s);

(4) the process and sanitization tools used to remove the data or method of destruction; and

(5) the name and address of the organization the equipment was transferred to.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
Department of Information Resources
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CHAPTER 206. STATE WEB SITES

The Department of Information Resources (department) proposes amendments to 1 TAC Chapter 206, §§206.1, 206.50 - 206.52, 206.55, 206.70 - 206.72, and 206.75, relating to state web sites. The amendments proposed to §§206.1, 206.50, and 206.70 are to align the Texas Accessibility Standards with the §508 standards of the Rehabilitation Act relating to Web accessibility contained in 36 C.F.R. Part 1194. Such changes are proposed in response to passage of House Bill 2819, which enacted §§2054.451 - 2054.465, Texas Government Code, relating to access to state electronic and information resources by individuals with disabilities. The changes to §§206.1, 206.50, 206.51, 206.55, 206.70, 206.71, and 206.75 are to clarify language and correct grammar. The amendments to §206.52 and §206.72 are to address Spanish language requirements for state agencies and institutions of higher education under §2054.116, Texas Government Code which was enacted by the 79th Legislature, Regular Session, in Senate Bill 213.

The proposed amendments to the rules underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for most state agencies if the amendments are adopted. Local government is not affected by the proposed amendments. State agencies and institutions of higher education that develop training and informational video and multimedia productions will be required to add synchronized captions. The software to add synchronized captions is free. The cost of adding the captions will vary based on the extent of captioning required and the labor rates of the individuals who provide the captioning. The department has identified a service that currently charges $2.08 per minute to caption Web-based video of live events using a Communication Access Realtime Translation (CART) service. The current cost of adding captions to existing video is $10 per minute with a $50 set-up fee if a text of the audio to be captioned is not provided. The cost if the audio text is provided is $3 per minute. The public will benefit by the adoption, because disabled individuals will have access to the same state agency web site information as is available to non-disabled individuals.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rules are inapplicable to businesses, and that there is no additional anticipated economic cost to persons if the amendments are adopted.

Comments on the proposed amendments may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

SUBCHAPTER A. DEFINITIONS

1 TAC §206.1

The amendments are proposed under §§2054.452, 2054.460 and 2054.052(a), Texas Government Code.

The amendments are promulgated to implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the provisions contained in 36 C.F.R. Part 1194 in the adoption of rules and to assist state agencies in complying with the requirements of §2054.116, Texas Government Code. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§206.1. Applicable Terms and Technologies for State Web Sites.

The following words and terms, when used with this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) 508 compliance--Using testing/validation tools and procedures to check Web pages/content for compliance with the §508 requirements of the Rehabilitation Act relating to Web accessibility contained in 36 C.F.R. Part 1194.

(2) [~~(1)~~] Accessible--A Web page that can be used in a variety of ways and that does not depend on a single sense or ability.

(3) [~~(2)~~] Accessibility Policy--The policies of a state agency or institution of higher education [~~An agency's policies~~] to ensure that access to its information, services, and programs are accessible, usable, understandable and navigable.

(4) [~~(3)~~] Contact information--a list of key personnel and/or position or program contacts, including public contact telephone numbers, general e-mail address, and other information deemed necessary by the agency or institution of higher education for facilitating public access.

(5) [~~(4)~~] Compact with Texans--customer service standards and performance measures required of state agencies, including institutions of higher education, by §§2113.006 and 2114.006, Government Code.

~~[(5) Generally accessible Internet site--A state Web site that provides for graceful transformation and makes content understandable and navigable. Additional information and resources are included in the accessibility-usability guidelines available at http://www.dir.state.tx.us/standards/srrpub11-accessibility.htm.]~~

(6) - (9) (No change.)

(10) Link Policy--State Web Site Link and Privacy Policy that identify the terms under which a person may use, copy information from, or link to a generally accessible Internet site of a state agency or institution of higher education. The requirements for these policies for state agencies other than institutions of higher education are set forth in subchapter B, §206.54 and are available at http://www.dir.state.tx.us/link_policy.htm. [~~http://www.dir.state.tx.us/standards/link_policy.htm.~~] The requirements for these policies for institutions of higher education are set forth in subchapter C, §206.74 and are available at http://www.dir.state.tx.us/link_policy2.htm. [~~http://www.dir.state.tx.us/standards/link_policy2.htm.~~]

(11) - (18) (No change.)

(19) Survey--An annual assessment report of State Web site compliance with the accessibility standards. The survey will also be used to identify specific requirements for accessibility training for Web content providers/developers. Additional information and resources are included in the State Web Site guidelines available at http://www.dir.state.tx.us.

(20) Training/Technical Assistance--Accessibility training and technical assistance for Web content providers/developers on compliance with the accessibility standards. Additional information and on-line resources are included in the State Web Site guidelines available at http://www.dir.state.tx.us.

(21) [~~(19)~~] Texas Homeland Security--the Governor's Office Web site with information about current homeland security threat levels in Texas, available at http://www.texashomelandsecurity.com.

(22) [~~(20)~~] TRAIL--Texas Records and Information Locator or its successor. Additional information is available at http://www.tsl.state.tx.us.

(23) [~~(21)~~] Transaction payment information--bank account and routing number, credit, debit, charge, or other forms of card-based, access device number, and/or Internet based, payment systems. Access device means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone, or in conjunction with another access device, may be used to:

(A) obtain money, goods, services, or another thing of value; or

(B) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(24) [~~(22)~~] Transaction Risk Assessment--An evaluation of the security and privacy required for an interactive Web session providing public access to government information and services. Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" available at http://www.dir.state.tx.us/UETA_Guideline.htm. [~~http://www.dir.state.tx.us/standards/UETA_Guideline.htm~~]

(25) [~~(23)~~] Usability--Web design criteria that focuses on user performance, ease of navigation, is understandable and is visually appealing.

(26) [~~(24)~~] W3C--World Wide Web Consortium. Additional information and copies of the current standards and recommendations are available at http://www.w3.org.

(27) Web accessibility standards--Texas Web accessibility standards for Web pages/content that comply with the applicable specifications contained in Subchapter B, §206.50(1) of this chapter for state agencies and Subchapter C, §206.70(1) of this chapter for institutions of higher education.

(28) [~~(25)~~] Web bug--code used to track and/or report information about a visitor to a Web page, or used in an e-mail message. Also known as a Web Beacon or Clear GIF.

(29) [~~(26)~~] Web page--A document that a state agency or institution of higher education has specifically designed for members of the public to access the official information (e.g., the governing or authoritative documents) via the Internet.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. STATE AGENCY WEB SITES

1 TAC §§206.50 - 206.52, 206.55

The amendments are proposed under §§2054.452, 2054.460 and 2054.052(a), Texas Government Code.

The amendments are promulgated to implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the provisions contained in 36 C.F.R. Part 1194 in the adoption of rules and to assist state agencies in complying with the requirements of §2054.116, Texas Government Code. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§206.50. Accessibility and Usability of State Web Sites.

Each state agency shall develop and publish an accessibility policy for its Web site and/or Web pages that addresses the following:

(1) Effective September 1, 2006 all new or changed Web pages/content shall comply with the following Texas Web accessibility standards/specifications, where applicable: [~~At least one copy of a state agency Web page, whether static or dynamic, must be in an accessible format.~~]

(A) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).

(B) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.

(i) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned. Audio-only Webcasts shall have a Web page available with the text of the information content.

(ii) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.

(iii) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.

(iv) Providing captions of live/real time broadcasts of one-time meetings (board/committee meetings or training for a known audience) by some state agencies may impose a significant difficulty or expense. Each state agency may consider alternative forms of accommodation (covered in the State Web Site Guidelines under "Multimedia, Audio, and Video Files") or assess the need for an exception by their executive director, and how they will respond to public or employee requests for access. In considering exceptions, the agency shall comply with the requirements addressed in §2054.460, Government Code.

(C) Web pages shall be designed so that all information conveyed with color is also available without color.

(D) Documents shall be organized so they are readable without requiring an associated style sheet.

(E) Redundant text links shall be provided for each active region of a server-side image map.

(F) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.

(G) Row and column headers shall be identified for data tables.

(H) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.

(I) Frames shall be titled with text that facilitates frame identification and navigation.

(J) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(K) A text-only page, with equivalent information or functionality, shall be provided to make a Web site comply with the provisions of this section, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.

(L) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by assistive technology.

(M) When a Web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with the following:

(i) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(ii) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(iii) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmat-

ically exposed so that assistive technology can track focus and focus changes.

(iv) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(v) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(vi) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(vii) Applications shall not override user selected contrast and color selections and other individual display attributes.

(viii) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(ix) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(x) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(xi) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(xii) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(N) When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(O) A method shall be provided that permits users to skip repetitive navigation links.

(P) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(2) Effective September 1, 2006 new Web page/site designs shall be tested using one or more §508 compliance tools in conjunction with manual procedures to validate compliance with the Texas Web accessibility standards. State agencies shall establish policies to monitor their Web site for compliance with the Texas Web accessibility standards. Additional information about testing tools and resources are in the State Web Site guidelines that are available from http://www.dir.state.tx.us. [~~Each state Web site shall meet the definition of a generally accessible Internet site, and ensure that Web pages transform gracefully and remain accessible despite any physical, sensory, or environmental constraints or technological barriers.~~]

(3) Each state Web site shall avoid vendor specific "non-standard" extensions and shall comply with applicable standards (e.g., IEFT (if using secure socket layer (SSL) connections), W3C (if using Cascading Style Sheets (CSS) and validated using the W3C CSS Validation Service), etc. For guidance regarding "non-standard" extensions, emerging technologies and applicable standards, state agencies shall refer to the department's guidelines available at http://www.dir.state.tx.us. [~~Each state Web site shall avoid vendor specific "non-standard" extensions and comply with applicable Internet and W3C standards. For guidance regarding "non-standard" extensions and applicable standards, state agencies shall refer to the department's guidelines available at http://www.dir.state.tx.us/standards/srrpub11.htm.~~]

(4) (No change.)

(5) Each state Web site should be designed with consideration for the types of Internet connections available to the citizens of Texas, and undergo accessibility and usability testing. [~~Each state Web sites must be designed with consideration for the types of Internet connections available to the citizens of Texas, and undergo accessibility and usability testing.~~]

(6) Testing/validation tools and manual procedures for validating §508 compliance satisfy compliance with the Texas Web accessibility standards.

(7) All state agencies shall participate in the survey and should participate in the training identified by the department in the State Web Site guidelines available at http://www.dir.state.tx.us. As a minimum, Web content providers/developers should understand the requirements for complying with §508 requirements for the following:

(A) Text Alternatives for non-text content.

(B) Checking for Accessibility.

(C) Accessible Navigation.

(D) Image maps.

(E) Audio & Multimedia.

(F) Accessible Forms.

(G) Accessible Tables.

(H) Scripts and Applets.

(I) Using Style Sheets.

§206.51. Accessibility Policy.

The home page of a state Web site, and key public entry points, shall include an "Accessibility" link to , or a "Site Policies" link to a Web page that contains the state agency's accessibility policy, site validation (e.g., §508), contact information for the agency's accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site. [~~The home page of a state Web site, and key public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the state agency's accessibility policy, site validation (e.g., W3C), contact information for the agency's accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site.~~]

§206.52. Translation of Web Site Content.

To facilitate the usability of state Web sites by people with limited English proficiency, in addition to English language content, agencies should consider providing the content of their Web sites in the primary language or languages used by the people using the Web site. The translation of Web site content into languages in addition to English can be achieved at less cost if the agency translates Web site content into additional languages at the time other changes are made to the Web site. The U.S. Department of Justice issued "Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons with Limited English Proficiency," a guidance document that sets

forth compliance standards to ensure that programs and activities provided in English are accessible to individuals with limited English proficiency. These guidelines may be helpful to an agency in determining the parts of its Web site content that should be available in languages in addition to English. The guidelines recommend that agencies consider:

(1) (No change.)

(2) specific requirements for Spanish language content that are addressed in §2054.116, Government Code;

(3) [~~(2)~~] the frequency with which those individuals contact the program;

(4) [~~(3)~~] the importance of the services provided; and

(5) [~~(4)~~] the resources available to the recipient agency and costs.

§206.55. Linking and Indexing State Web Sites.

(a) (No change.)

(b) The home page of a state Web site shall incorporate TRAIL metadata and shall:

(1) (No change.)

(2) Provide individual links to the following information, or to the Site Policies page with links to the following:

(A) - (D) (No change.)

(E) Compact with Texans [~~Compact With Texans~~].

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION WEB SITES

1 TAC §§206.70 - 206.72, 206.75

The amendments are proposed under §§2054.452, 2054.460 and 2054.052(a), Texas Government Code.

The amendments are promulgated to implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the provisions contained in 36 C.F.R. Part 1194 in the adoption of rules and to assist state agencies in complying with the requirements of §2054.116, Texas Government Code. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§206.70. Accessibility and Usability of Institution of Higher Education Web Sites.

Each institution of higher education shall develop and publish an accessibility policy for its Web site and/or Web pages that addresses the following:

(1) Effective September 1, 2006 all new or changed Web pages/content shall comply with the following Texas Web accessibility standards/specifications, where applicable: [~~At least one copy of the Web page, whether static or dynamic, must be in an accessible format.~~]

(A) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).

(B) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.

(i) All training and informational video and multimedia productions which support the institution of higher education's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned. Audio only Webcasts shall have Web page available with the text of the information content.

(ii) All training and informational video and multimedia productions which support the institution of higher education's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.

(iii) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.

(iv) Providing captions of live/real time broadcasts of one-time meetings (e.g., board/committee meetings or training for a known audience) by some institutions of higher education may impose a significant difficulty or expense. Each institution of higher education may consider alternative forms of accommodation (covered in the State Web Site Guidelines under "Multimedia, Audio, and Video Files") or may assess the need for an exception by their president or chancellor, and how they will respond to public or employee requests for access. In considering exceptions, the institution of higher education shall comply with the requirements addressed in §2054.460, Government Code.

(C) Web pages shall be designed so that all information conveyed with color is also available without color.

(D) Documents shall be organized so they are readable without requiring an associated style sheet.

(E) Redundant text links shall be provided for each active region of a server-side image map.

(F) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.

(G) Row and column headers shall be identified for data tables.

(H) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.

(I) Frames shall be titled with text that facilitates frame identification and navigation.

(J) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(K) A text-only page, with equivalent information or functionality, shall be provided to make a Web site comply with the provisions of this section, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.

(L) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by assistive technology.

(M) When a Web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with the following:

(i) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(ii) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(iii) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(iv) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(v) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(vi) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(vii) Applications shall not override user selected contrast and color selections and other individual display attributes.

(viii) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(ix) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(x) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(xi) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(xii) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(N) When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(O) A method shall be provided that permits users to skip repetitive navigation links.

(P) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(2) Effective September 1, 2006 new Web page/site designs shall be tested using one or more 508 compliance tools used in conjunction with manual procedures to validate compliance with the Texas Web accessibility standards. Institutions of higher education shall establish policies to monitor their Web site for compliance with the Texas Web accessibility standards. Additional information about testing tools and resources are in the State Web Site guidelines that are available from http://www.dir.state.tx.us. [~~Each Web site shall meet the definition of a generally accessible Internet site, and ensure that Web pages transform gracefully and remain accessible despite any physical, sensory, or environmental constraints or technological barriers.~~]

(3) Each Web site shall avoid vendor specific "non-standard" extensions and shall comply with applicable standards (e.g., IETF (if using secure socket layer (SSL) connections), W3C (if using Cascading Style Sheets (CSS) and validated using the W3C CSS Validation Service), etc.). For guidance regarding "non-standard" extensions, emerging technologies and applicable standards, institutions of higher education shall refer to the department's guidelines available at http://www.dir.state.tx.us. [~~Each Web site shall avoid vendor specific "non-standard" extensions and comply with applicable Internet and W3C standards. For guidance regarding "non-standard" extensions and applicable standards, institutions of higher education shall refer to the department's guidelines available at http://www.dir.state.tx.us/standards/srrpub11.htm. The policy should cover testing and validation of Web pages.~~]

(4) The policy should cover testing and validation of Web pages. [~~Each Web site shall be designed with consideration for the types of Internet connections available to the citizens of Texas and undergo accessibility and usability testing.~~]

(5) Each Web site should be designed with consideration for the types of Internet connections available to the citizens of Texas, and undergo accessibility and usability testing.

(6) Testing/validation tools and manual procedures for validating §508 compliance satisfy compliance with the Texas Web accessibility standards.

(7) All institutions of higher education shall participate in the survey and should participate in the training identified by the department in the State Web Site guidelines available at http://www.dir.state.tx.us. As a minimum, Web content providers/developers should understand the requirements for complying with §508 requirements for the following:

(A) Text Alternatives for non-text content

(B) Checking for Accessibility

(C) Accessible Navigation

(D) Image maps

(E) Audio & Multimedia

(F) Accessible Forms

(G) Accessible Tables

(H) Scripts and Applets

(I) Using Style Sheets

§206.71. Accessibility Policy.

The home page of an institution of higher education Web site, and key public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the institution of higher education accessibility policy, site validation (e.g., §508), contact information for the accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site. [~~The home page of an institution of higher education Web site, and key public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the institution of higher education accessibility policy, site validation (e.g., W3C), contact information for the accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site.~~]

§206.72. Translation of Web Site Content.

To facilitate the usability of institutions of higher education Web sites by people with limited English proficiency, in addition to English language content, institutions of higher education should consider providing the content of their Web sites in the primary language or languages used by the people using the Web site. The translation of Web site content into languages in addition to English can be achieved at less cost if the institution of higher education translates Web site content into additional languages at the time other changes are made to the Web site. The U.S. Department of Justice issued "Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons with Limited English Proficiency," a guidance document that sets forth compliance standards to ensure that programs and activities provided in English are accessible to individuals with limited English proficiency. These guidelines may be helpful in determining the parts of Web site content that should be available in languages in addition to English. The guidelines recommend that consideration be given to:

(1) (No change.)

(2) specific requirements for Spanish language content that are addressed in §2054.116, Government Code;

(3) [~~(2)~~] the frequency with which those individuals contact the program;

(4) [~~(3)~~] the importance of the services provided; and

(5) [~~(4)~~] the resources available to the recipient institution of higher education and costs.

§206.75. Linking and Indexing State Web Sites.

(a) (No change.)

(b) The home page of each institution of higher education Web site shall incorporate TRAIL metadata and shall:

(1) (No change.)

(2) Provide individual links to the following institution of higher education information, or to the Site Policies page with links to the following:

(A) - (D) (No change.)

(E) Compact with Texans [~~Compact With Texans~~].

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2005.

TRD-200504998
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 936-6448

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CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Department of Information Resources (department) proposes new 1 TAC Chapter 213, §§213.1 - 213.3, 213.10 - 213.17, and 213.30 - 213.37 to align the Texas Accessibility Standards with the §508 standards of the Rehabilitation Act relating to the accessibility of electronic and information resources contained in 36 C.F.R. Part 1194.

The proposed rules underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if the proposed rules are adopted. Local government is not subject to the rules.

The public and state employees will benefit by the adoption, because the rules are designed to provide accessibility to state agency electronic and information resources to the disabled.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rules are inapplicable to businesses, and that there is no additional anticipated economic cost to persons if the rules are adopted.

Comments on the proposal may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

SUBCHAPTER A. DEFINITIONS

1 TAC §§213.1 - 213.3

The rules are proposed under §§2054.451 - 2054.465 and §2054.052(a), Texas Government Code.

These rules are promulgated to implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the accessibility provisions contained in 36 C.F.R. Part 1194 in the adoption of rules. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§213.1. Applicable Terms and Technologies for Electronic and Information Resources.

The following words and terms, when used with this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Alternate formats--Alternate formats usable by people with disabilities may include, but are not limited to, Braille, ASCII text,

large print, recorded audio, and electronic formats that comply with this chapter.

(2) Alternate methods--Different means of providing information, including product documentation, to people with disabilities. Alternate methods may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

(3) Assistive technology--Any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(4) Buy Accessible Wizard--a web-based application (http://www.buyaccessible.gov) that guides users through a process of gathering data and providing information about Electronic and Information Resources and §508 compliance.

(5) Electronic and information resources--Includes information technology and any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information. The term electronic and information resources includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

(6) Electronic and information resources accessibility standards--Texas accessibility standards for Electronic and Information Resources that comply with the applicable specifications contained in Subchapter B, §§213.10 - 213.16 of this chapter for state agencies and Subchapter C, §§213.30 - 213.36 of this chapter for institutions of higher education.

(7) Information technology--Any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(8) Operable controls--A component of a product that requires physical contact for normal operation. Operable controls include, but are not limited to, mechanically operated controls, input and output trays, card slots, keyboards, and keypads.

(9) Product--Electronic and information technology.

(10) Self Contained, Closed Products--Products that generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology. These products include, but are not limited to, information kiosks and information transaction machines, copiers, printers, calculators, fax machines, and other similar products.

(11) Telecommunications--The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(12) TTY--An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

(13) Voluntary Product Accessibility Template (VPAT)--A Web based summary to assist contracting officials and other buyers in making preliminary assessments regarding the availability of commercial Electronic and Information Resources products and services with features that support accessibility. The VPAT forms and additional information are available at http://www.section508.gov.

(14) Web Accessibility Standards--Texas Web accessibility standards for Web pages/content that comply with the applicable specifications contained in Chapter 206, Subchapter B, §206.50(1) of this title for state agencies and Chapter 206, Subchapter C, §206.70(1) of this title for institutions of higher education.

§213.2. Institution of Higher Education.
A university system or institution of higher education as defined by §61.003, Education Code.

§213.3. State Agency.
A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 2, 2005.

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For further information, please call: (512) 936-6448

SUBCHAPTER B. ELECTRONIC AND INFORMATION RESOURCES FOR STATE AGENCIES

1 TAC §§213.10 - 213.17

The rules are proposed under §§2054.451 - 2054.465 and §2054.052(a), Texas Government Code.

These rules are promulgated to implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the accessibility provisions contained in 36 C.F.R. Part 1194 in the adoption of rules. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§213.10. Software Applications and Operating Systems.

(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where

the function itself or the result of performing a function can be discerned textually.

(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(g) Applications shall not override user selected contrast and color selections and other individual display attributes.

(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(l) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

§213.11. Telecommunications Products.

(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.

(b) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.

(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.

(d) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.

(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.

(f) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.

(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.

(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.

(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.

(j) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.

(k) Products which have mechanically operated controls or keys, shall comply with the following:

(1) Controls and keys shall be tactilely discernible without activating the controls or keys.

(2) Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.

(3) If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.

(4) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

§213.12. Video and Multimedia Products.

(a) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(b) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.

(c) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.

(d) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.

§213.13. Self Contained, Closed Products.

(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.

(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with Telecommunications products in §213.11(k)(1) - (4) of this subchapter.

(d) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(e) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.

(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(g) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(h) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.

(i) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(j) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:

(1) The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.

(2) Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.

(3) Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.

(4) Operable controls shall not be more than 24 inches behind the reference plane.

§213.14. Desktop and Portable Computers.

(a) All mechanically operated controls and keys shall comply with Telecommunications products in §213.11(k)(1) - (4) of this subchapter.

(b) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with Telecommunications products in §213.11(k)(1) - (4) of this subchapter.

(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards.

§213.15. Functional Performance Criteria.

(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.

(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.

(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.

(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.

(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.

§213.16. Information, Documentation, and Support.

(a) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.

(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.

(c) Support services for products shall accommodate the communication needs of end-users with disabilities.

§213.17. State Agency Application.

(a) As of September 1, 2006 all new electronic and information resources products developed, or procured by a state agency shall comply with the applicable provisions of this subchapter, unless it would impose a significant difficulty or expense for the state agency.

(1) When compliance with the provisions of this subchapter imposes a significant difficulty or expense, state agencies shall provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.

(2) When procuring a product, if a state agency determines that compliance with any provision of this subchapter imposes a significant difficulty or expense, the documentation by the state agency supporting the procurement shall explain why, and to what extent, compliance with each such provision would impose a significant difficulty or expense.

(b) When procuring a product, each state agency shall procure products which comply with the provisions in this subchapter when

such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(1) State agencies may use the Voluntary Product Accessibility Template (VPAT) to assess the availability of products in the commercial marketplace.

(2) State agencies may use the Buy Accessible Wizard to assess compliance with the provisions of this subchapter.

(c) This subchapter applies to electronic and information resources developed, procured, maintained, or used by agencies directly or used by a contractor under a contract with an agency which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(d) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Renée Mauzy
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SUBCHAPTER C. ELECTRONIC AND INFORMATION RESOURCES FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§213.30 - 213.37

The rules are proposed under §§2054.451 - 2054.465 and §2054.052(a), Texas Government Code.

These rules are promulgated to implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the accessibility provisions contained in 36 C.F.R. Part 1194 in the adoption of rules. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§213.30. Software Applications and Operating Systems.

(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(g) Applications shall not override user selected contrast and color selections and other individual display attributes.

(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(l) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

§213.31. Telecommunications Products.

(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.

(b) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.

(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.

(d) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.

(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.

(f) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.

(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.

(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.

(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.

(j) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.

(k) Products which have mechanically operated controls or keys, shall comply with the following:

(1) Controls and keys shall be tactilely discernible without activating the controls or keys.

(2) Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.

(3) If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.

(4) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

§213.32. Video and Multimedia Products.

(a) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(b) All training and informational video and multimedia productions other than those for use in the classroom, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.

(c) All training and informational video and multimedia productions other than those for use in the classroom, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.

(d) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.

§213.33. Self Contained, Closed Products.

(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.

(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with Telecommunications products in §213.31(k)(1) - (4) of this subchapter.

(d) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(e) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.

(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(g) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(h) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.

(i) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(j) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:

(1) The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.

(2) Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.

(3) Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.

(4) Operable controls shall not be more than 24 inches behind the reference plane.

§213.34. Desktop and Portable Computers.

(a) All mechanically operated controls and keys shall comply with Telecommunications products in §213.31(k)(1) - (4) of this subchapter.

(b) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with Telecommunications products in §213.31(k)(1) - (4) of this subchapter.

(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards.

§213.35. Functional Performance Criteria.

(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.

(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.

(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.

(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.

(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.

§213.36. Information, Documentation, and Support.

(a) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.

(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.

(c) Support services for products shall accommodate the communication needs of end-users with disabilities.

§213.37. Institutions of Higher Education Application.

(a) As of September 1, 2006 all new electronic and information resources products developed, or procured by an institution of higher education shall comply with the applicable provisions of this subchapter, unless it would impose a significant difficulty or expense for the institution of higher education.

(1) When compliance with the provisions of this subchapter imposes a significant difficulty or expense, institutions of higher education shall provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.

(2) When procuring a product, if an institution of higher education determines that compliance with any provision of this subchapter imposes a significant difficulty or expense, the documentation by the institution of higher education supporting the procurement shall explain why, and to what extent, compliance with each such provision would impose a significant difficulty or expense.

(b) When procuring a product, each institution of higher education shall procure products which comply with the provisions in this subchapter when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(1) Institutions of higher education may use the Voluntary Product Accessibility Template (VPAT) to assess the availability of products in the commercial marketplace.

(2) Institutions of higher education may use the Buy Accessible Wizard to assess compliance with the provisions of this subchapter.

(c) This subchapter applies to electronic and information resources developed, procured, maintained, or used by an institution of higher education directly or used by a contractor under a contract with an institution of higher education which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(d) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 2, 2005.

TRD-200505015
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 936-6448

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §9.9, §9.51

The Railroad Commission of Texas proposes amendments to §9.9, relating to Requirements for Certificate Renewal, and §9.51, relating to General Requirements for Training and Continuing Education. The Commission proposes these amendments to improve the efficiency and recover the cost of administering LP-gas examinations, examination renewals and training requirements for persons who handle LP-gas in the course of their employment with a state agency, county, municipality, school district, or other governmental subdivision, and who elect to become Railroad Commission certified to perform LP-gas activities even though they are not required to do so and would not be required to do so under the amendments as proposed. Aside from some competitive grants, the Commission's LP-gas training and continuing education program is funded entirely from receipts of LP-gas certified individuals' $35 annual examination renewal fees and $75 per day seminar fees, which are appropriated to the Commission for the training and continuing education program by a rider in the General Appropriations Act. No state general tax revenue is appropriated or used to fund this program. For this reason, it is important that the Commission recover the cost of providing LP-gas training and continuing education services to employees of public organizations who

voluntarily elect to become certified. The Commission proposes an effective date of March 1, 2006, for these amendments.

In §9.9, the Commission proposes to remove the sentence in subsection (c) that authorizes the exemption from annual certificate renewal fees for employees of a state agency, county, municipality, school district, or other governmental subdivision.

In §9.51(b)(3)(C), the Commission proposes to qualify the current exemption from training and continuing education requirements for employees of a state agency, county, municipality, school district, or other governmental subdivision. As amended, the employees of these public entities that are or become certified would be subject to the Commission's training and continuing education requirements. In subsection (b)(4), the Commission proposes to amend the wording to clarify that all employers must properly supervise all of their employees who perform LP-gas activities, whether or not the employees are certified; all public entity employers must properly train their uncertified employees, but only those who perform LP-gas activities; all public entity employees who perform any LP-gas activity must be trained, not just those who service or refuel LP-gas vehicles; and either the employer or a competent person other than the employer may provide the training, e.g., a Category E licensee, an RRC-authorized outside trainer, or an AFRED instructor. In subsection (f)(2)(E), the Commission proposes to remove the exemption from payment of the non-credit class fee for political subdivisions, but to authorize waiver of the fees if the Commission recovers its costs for a class from another source, such as from a competitive grant.

Dan Kelly, Director, Alternative Fuels Research and Education Division, has determined that for each year of the first five years the proposed amendments are in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments. The Commission will receive some examination fees, examination renewal fees, and training fees from public employees who voluntarily choose to become certified to perform LP-gas activities through the Railroad Commission. The revenue from these sources cannot be estimated in advance, because the decision whether to certify is voluntary and rests with each public entity that performs LP-gas activities, not with the Commission.

The Commission currently certifies about 270 employees of exempt public entities each year. The fee to take an initial qualifying examination is $20, the annual fee to renew the examination and maintain certification is $35, and the fee to take an initial eight-hour training seminar is $75. Subsequent eight-hour Railroad Commission classes taken to fulfill continuing education requirements are free of charge to all certified individuals in good standing. If all currently certified public employees renewed their certifications under the rules as proposed, the Commission would receive an additional $9,450 annually to help defray the cost of operating the training and continuing education program. If half of these individuals renewed under the rules as proposed, the Commission would receive an additional $4,725 annually for the program. The actual amount received for this purpose cannot be estimated accurately but will probably be less than $9,450, because some currently certified individuals who are exempt from fees by virtue of their employment with a state agency, county, municipality, school district, or other governmental subdivision may choose not to renew their certifications. The Commission expects that some of these individuals will choose to maintain their certifications and that in the future some new employees of these public entities will choose to take and renew LP-gas qualifying examinations and attend training and continuing education classes, because the fees for these services are low and because the credit for satisfactory completion of an examination accrues to the individual and would thus transfer with an individual who changes jobs.

The Commission will also experience some savings because of the greater efficiencies in processing public employees' applications, examinations, records, notices, certification cards, and renewals. Currently, the Commission incurs additional estimated costs of $5,700 a year to renew public employees' certification. The reason is that public employees' renewals must be processed manually, one individual at a time, rather than automatically and all at once for a company's whole roster of certified employees, as is done for LP-gas licensees. This estimate is based on additional cost of staff time spent creating and mailing separate renewal notices, conducting individual database searches, entering and editing data, communicating with affected individuals and their employers, and resolving problems. Under the proposed amendments, these will no longer require special individual manual handling but will be processed using the same automated systems the Commission currently uses to handle certification, renewals and training for about 9,700 certified employees of private-sector LP-gas licensees.

There are no additional fiscal implications for state government. However, a state agency that elects to pay the examination, renewal and seminar fees for its employees who perform LP-gas activities would incur these expenses.

There are no fiscal implications for local governments, because their employees who handle LP-gas will continue to be exempt from examination and continuing education requirements. Local governments that choose to certify their employees who handle LP-gas will be subject to the fees described above. Local governments that choose not to certify their employees who handle LP-gas will not be affected by the proposed changes.

Mr. Kelly has also determined that the public benefit anticipated as a result of the amendments will be greater consistency, efficiency, and effectiveness in the administration of LP-gas examinations, examination renewals, and training programs.

The provisions of Texas Government Code, §2006.002(c) do not apply in this rulemaking, because the only potentially affected entities are state agencies, counties, municipalities, school districts, or other governmental subdivisions that elect to have their employees who engage in LP-gas activities take and renew LP-gas qualifying examinations and attend training and continuing education classes. None of the affected entities is a small business, micro-business, or individual. LP-gas certification will remain voluntary for employees of public entities whose public-entity employers either do not pay these expenses for their employees engaged in LP-gas activities or do not require their employees to be certified.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Thomas D. Petru

at (512) 463-6930. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.088, which requires the Commission to establish reasonable examination, course of instruction, and seminar registration fees, and authorizes, but does not require, the Commission to exempt public employees of the State of Texas or state subdivisions from the examination fee, the examination renewal fee, and seminar fees.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.088.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on November 1, 2005.

§9.9. Requirements for Certificate Renewal.

(a) - (b) (No change.)

(c) Certificate holders shall remit the nonrefundable $35 annual certificate renewal fee to AFRED on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee. [~~An employee of a state agency, county, municipality, school district, or other governmental subdivision is not required to pay the annual certificate renewal fee.~~]

(1) - (2) (No change.)

(d) (No change.)

§9.51. General Requirements for Training and Continuing Education.

(a) (No change.)

(b) Applicants for new licenses or new certificates, as set forth in §9.7 and §9.8 of this title (relating to Application for License and License Renewal Requirements, and Application for a New Certificate, respectively) and persons holding existing licenses or certificates shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may regain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to the Alternative Fuels Research and Education Division (AFRED).

(1) - (2) (No change.)

(3) The training and continuing education requirements do not apply to:

(A) - (B) (No change.)

(C) an employee of a state agency, county, municipality, school district, or other governmental subdivision, unless such an individual is or becomes certified;

(D) - (E) (No change.)

(4) Each individual who performs LP-gas activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by the Commission to perform such LP-gas activities shall be properly trained by a competent person in the safe performance of such LP-gas activities [~~Any employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision who is not required to complete the training or continuing education shall be properly supervised and trained by the employer in the maintenance and storage of LP-gas and vehicles fueled by LP-gas, and in the operation of equipment during the filling and dispensing of LP-gas~~].

(c) - (e) (No change.)

(f) Registering for a class.

(1) (No change.)

(2) Costs for classes.

(A) - (D) (No change.)

(E) Requests for classes where no training or continuing education class credit is given shall be submitted in writing to the AFRED training section. The AFRED training section may conduct the requested classes at its discretion. The nonrefundable fee for a non-credit class is $250 if no overnight expenses are incurred by the AFRED training section, or $500 if overnight expenses are incurred. AFRED may waive the fee for a non-credit class in cases where the Commission recovers the cost of the class from another source, such as a grant. [~~A political subdivision is not required to pay the non-credit class fee.~~]

(F) (No change.)

(3) - (5) (No change.)

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2005.

TRD-200504989
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," Figure: 16 TAC §25.214(d)(1) is not included in the print version of the Texas Register. The Figure is available in the on-line issue of the November 18, 2005, issue of the Texas Register.)

The Public Utility Commission of Texas (commission) proposes an amendment to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities. The proposed amendment will clarify the terms and conditions of retail delivery service and establish standard services to be provided by all investor owned utilities. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 29637 is assigned to this proceeding.

Shawnee Claiborn-Pinto, Sr. Retail Market Analyst, has determined that for each year of the first five-year period the proposed section is in effect there will be an impact to the Public Utility Commission of Texas to monitor the implementation and to process additional rate cases or discretionary service cases. There will be an impact to the Electric Reliability Council of Texas (ERCOT) to develop systems and transactions to support these changes.

Ms. Claiborn-Pinto has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to enhance customer service for electricity users, which will be achieved through better standardization of delivery service by transmission and distribution providers to Competitive Retail Electric Providers and customers. There may be costs to small businesses that operate the competitive retail market in ERCOT. However, it is believed that standardization and the other benefits accruing from implementation of the proposed section will outweigh these costs.

Ms. Claiborn-Pinto has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, January 10, 2006, beginning at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, no later than 3:00 p.m. on Monday, December 19, 2005. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted no later than 3:00 p.m. on Monday, January 9, 2006. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 29637. The commission will also accept comments on the following question:

1. PURA §43.055 states that an "an electric utility…shall employ all reasonable measures to ensure that the operation of the BPL (Broadband over Power Line) system does not interfere with or diminish the reliability of the utility's electric delivery system. Should a disruption in the provision of electric service occur, the electric utility shall be governed by the terms and conditions of the retail electric delivery service tariff. At all times, the provision of broadband services shall be secondary to the reliable provision of electric delivery service." Should the commission alter the retail electric delivery service tariff to implement this provision or otherwise recognize that some Transmission and Distribution Utilities (TDUs) will be using their distribution facilities to provide BPL?

When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is interested in receiving only "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this rule pursuant to PURA §39.203 which grants the commission the authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice and PURA §32.101 which requires an electric utility to file a tariff with the commission.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 32.101, and 39.203.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a Retail Customer at transmission voltage, provided by a transmission and distribution utility (TDU), and to standardize the terms of service among TDUs. A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those Retail Customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all Retail Customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to Retail Customers and to ensure reliability of the delivery systems, customer safeguards, and services.

(b) Application. This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all TDUs in Texas. The terms and conditions contained herein do not apply to the provision of transmission service by non-ERCOT utilities to retail customers.

(c) Tariff. Each TDU in Texas shall file with the commission a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. The provisions of this tariff are minimum, mandatory, requirements that shall be complied with and offered to all Competitive Retailers and Retail Customers unless other-

wise specified. TDUs may add to or modify only Chapters 2 and 6 of the tariff, reflecting individual utility characteristics and rates, in accordance with commission rules and procedures to change a tariff; however the only modifications the TDU may make to 6.1.2 are to insert the commission-approved rates. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written. These chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3, 4, and 5, the provision found in Chapters 1, 3, 4, and 5 shall apply, unless otherwise specified in Chapters 1, 3, 4, and 5.

(d) Pro-forma Retail Delivery Tariff.

(1) Tariff for Retail Delivery Service.
Figure: 16 TAC §25.214(d)(1)

(2) Compliance tariff. Compliance tariffs pursuant to this section must be filed by June 15, 2006 [~~December 1, 2003 to be effective January 1, 2004~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2005.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§61.10, 61.20, 61.30, 61.40, 61.41, 61.42, 61.43, 61.44, 61.46, 61.47, 61.80, 61.105, 61.107, 61.108, 61.110, 61.111, and 61.112, new rule §§61.21, 61.22, 61.23, 61.24, 61.48, 61.49, and 61.106, and the repeal of §61.21 and §61.109 regarding the combative sports program.

Rule 61.10. Definitions is amended to delete the definitions of "amateur", "bout/or contest", "Combative Sports", "Commission", "Event", and "Promoter" because these terms are defined in the Code. The definition of "shoot wrestling/fighting..." is also deleted as those particular martial arts are now included in "mixed martial arts". Paragraphs are renumbered as needed.

The definition of "contestant" is amended to specifically include professional combative sports contestants as that phrase is employed throughout the rules. A new definition for "knock-down" is added. The definition of "license" is expanded to include registrations. The definition of "manager" is amended to make it clear that the term only applies to professional combative sports contestants.

The definition of the term "matchmaker" is amended for clarification. The definition of "purse" is amended to refer to an event rather than a contest. The definition of "ring officials" is amended to clarify that "physician" means ringside physicians. The definition of "Technical Zone" is amended to clarify it and to provide that it is alcoholic beverage free. A new definition of "Full Contact" is added to define the term, which is used in the definition of "combative sports" in statute. The two definitions when considered together indicate that events where full contact is prohibited, as defined here, are not regulated under the Act.

Rule 61.20(a) General Licensing Requirements is amended to make it clear that persons participating in professional events must be licensed. New subsection (b) is added to require Amateur Combative Sports Associations ("ACSA") to be registered as required by new statute. Newly renumbered subsection (e) is amended to remove the requirement that contestants and seconds notify the department of address changes. Original subsection (c) is deleted as the requirement to report changes in ownership is not needed in this program. Original subsections (e), (f), (g), (h), and (j) are deleted here and moved to rules more appropriate to their subjects.

Rule 61.21 formerly General Prohibitions (new Rule 61.23) is a new rule section, Licensing Requirements--Referees. The rule establishes criteria that referees must meet to become licensed and to provide a grandfathering period for persons currently licensed. The new rule will assure that persons serving as referees are qualified.

New Rule 61.22. Licensing Requirements--Judges establishes criteria for licensure as a judge.

New Rule 61.23. General Prohibitions (formerly Rule 61.21) is amended at subsection (b) to clarify the language with no substantive change. Subsection (c) is amended to eliminate references to elimination tournaments that were banned by statutory change, and to remove requirements for certain medical tests that are required by other rules. Subsections (d), (e), (f), and (h) are clarified without substantive change. Subsection (g) is deleted as it simply repeats requirements set out in statute or elsewhere in the rules. Subsection (i) is amended to allow persons who are members of a ranking organization, but who are not officers or directors, to be licensed as judges.

New Rule 61.24. Practice Requirements--General consists of subsections (a), (b), and (c) which were subsections (e), (g), and (j) that were deleted from §61.20. Some of the language has been changed but the substance has not.

Rule 61.30. Responsibilities and Authority of the Executive Director is amended at its title. Subsections (a) and (b) have been combined into subsection (a) without substantive change. Subsections (b)-(j) and (m)-(q) have been amended to clarify language but with no substantive change. Subsection (k), as amended, has been changed to continue the authority of the Executive Director to waive rules, but under the conditions set out in the amended language. Subsection (p) is deleted and moved to §61.40.

Rule 61.40. Responsibilities of the Promoter is amended at subsection (a)(1) to require promoters at the time of licensure and license renewal to post two bonds, one for $10,000 to secure payment of costs of an event and one for $15,000 to secure payment of gross receipts taxes. These provisions are not new. Also, a provision allowing a promoter to file a financial statement in lieu of the $10,000 bond has been deleted. Subsection (b)(13) is amended to delete language that is now in §61.107. Subsection (b)(15) is deleted and issues concerning gloves are addressed in the new subsection (b)(15) as amended. New subsection (b)(15) requires promoters to follow rules specific to the class of event for equipment and gloves. Subsections (b)(15)(A) through (L)

are deleted and moved to §61.106. Subsection (b)(15)(B) as amended now requires the promoter to set up the Technical Zone as instructed by the Executive Director. Subsection (b)(16) as amended now allows promoters to pay certain licensing fees by money order as well as by check. Subsection (d)(1) is amended to remove the requirement that the promoters' license number be printed on each ticket. Subsection (d)(3) is amended to provide that when there is a ticket manifest, tickets of different prices are not required to be printed on paper of different colors. Subsection (d)(10) is added. This is old §61.30 subsection (p) that was deleted. The substance is not changed. Subsection (e) is amended to provide three business days for payment of the gross receipts tax rather than 72 hours.

Rule 61.41. Responsibilities of the Referee is amended by deleting subsection (f) and replacing it in subsection (k) as amended. Subsection (k) is amended at paragraph (1) and is changed to refer to a blow as opposed to a punch causing a knock-down. A knock-down is now defined in the definitions rule. New subsections (k)(7) and (8) are where the old subsection (f) is now shown without substantive change. Subsections (p) and (q) are deleted and have been moved without substantive change to new §61.21.

Rule 61.42 is amended at subsections (d), no substantive change and (e) to remove a reference to a referee's scorecard. Subsection (f) is deleted and moved without substantive change to new Rule 61.22

Rule 61.43. Responsibilities of Seconds is amended at subsection (e)(4) to refer to unapproved substances as opposed to solutions. Subsections (f), (h), and (i) are amended to clarify language with no substantive change. New subsection (k) is added to require seconds to attend the referee's meeting. This requirement was deleted from Rule 61.20(h).

Rule 61.44. Responsibilities of Managers is amended to delete subsection (b) and add subsection (d) requiring managers to attend the referee's meeting. This requirement was deleted from Rule 61.20(h).

Rule 61.46. Responsibilities of Ringside Physicians is amended at paragraph (1) to allow chief seconds to be present during physical examinations.

Rule 61.47. Responsibilities of Contestants is amended at subsection (g) to remove gender specific provisions to new subsection (g) and to add language concerning jewelry from subsection (u) with no substantive changes. Subsections (k) and (l) that are gender specific are deleted. Subsection (k), as amended, is changed to make it clear that all contestants must have a pre-fight examination, and the required reporting of unfitness may now also be made by the chief second. Subsection (m) as amended is changed to remove the gender specific reference to a positive pregnancy test. Subsection (n) as amended is changed to clarify language. Subsections (r), (t), and (u) are deleted. Subsection (u) is now in subsection (g). New subsection (q) is added to address gender specific requirements deleted from other sections. No substantive changes were made. New subsection (r) is added to require contestants to attend the referee's meeting. This requirement was deleted from Rule 61.20(b).

New Rule 61.48. Responsibilities of Amateur Combative Sports Associations is added to implement statutory changes requiring that ACSA's be registered. The requirements spelled out here are modeled after the rule for promoters. Subsection (b) requires ACSA's to file rules with the Executive Director and provides that they must address issues that the department has identified that concern safety of contestants, including use of licensed referees. All other participants other than the ACSA, are not required to be licensed. The rules also may establish guidelines for payment of certain expenses for contestants. Those that elect to pay expenses must provide a bond as set out in subsection (d).

New Rule 61.49 requires that amateur organizations exempt from licensing and bonding requirements inform the department of the date, time, and location of their events. That information is needed to respond to inquiries from the public where concern is expressed that illegal events are being conducted. The department can inform them that they are not being conducted in violation of the statute.

Rule 61.80. Fees is amended to delete subsection (a)(10) and to add a new (a)(10) for ACSA's. Subsection (b) is amended to provide that Federal ID cards are valid for four years and subsection (c) is amended to make it clear a permit fee is required for professional events only.

Rule 61.105. Weight Categories and Weigh-in-Boxing and Kickboxing is amended at subsection (d) to clarify the weight categories. There are no substantive changes.

New Rule 61.106. Ring and Glove Requirements--Boxing and Kickboxing is added to replace items deleted from Rule 61.40 with no substantive changes.

Rule 61.107. Boxing is amended at subsection (b) to remove reference to referees scoring contests. New subsection (e) is added to replace language deleted from Rule 61.40(b)(13) concerning the length of rounds. Kickboxing and mixed martial rules have provisions concerning the length and number of rounds.

Rule 61.108 is amended at subsections (g) and (h) to make it clear that provisions concerning holding purses address professional events only.

Rule 61.109. Elimination Tournaments/Toughman Competitions is deleted. Elimination tournaments are no longer allowed pursuant to statute.

Rule 61.110. Martial Arts is amended at subsection (b) to clarify and correct references to other rule sections. Subsection (c) is amended to clarify that combative sports events may be conducted pursuant to official rules of any particular art if those rules have been approved by the Department.

Rule 61.111. Mixed Martial Arts has been amended at subsection (a) to clarify and correct references to other rule sections and to delete references to specific martial arts. Subsection (b) through (o) have been deleted and replaced with new subsections (b) through (t). The new subsections do not substantially change the deleted rules but they now include specific references to ring requirements and also allow use of a "fighting area" as defined. The new subsection also includes weight categories and reference to the length of rounds and contests.

Rule 61.112. Muay Thai Fighting is amended at subsection (b) by deleting the provision that allows grappling techniques used while the opponents are standing.

These rules are necessary to implement changes to the program brought about by Senate Bill 796 adopted by the 79th Legislature, and in response to the Department's rules review of Chapter 61, pursuant to Government Code, §2001.039 where the Commission determined that, other than implementing statutory changes, the rules should be maintained, but clarified, and brought into closer compliance with statutory provisions.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposal is in effect the Department will experience an increase in gross receipt taxes collected and will incur minimal costs to register Amateur Combative Sports Associations that are now required by statute to be registered.

Mr. Kuntz also has determined that for each year of the first five-year period the proposal is in effect, the public benefit will be that the rules will effectively implement statutory changes and participants in certain amateur events will participate in a safer environment because it is regulated.

The probable economic costs to small or micro-businesses and to persons required to comply with the proposal is that Amateur Combative Sports Associations will incur registration costs and will be required to pay a 3% gross receipts tax. These are statutory requirements that are implemented by the rules.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§61.10, 61.20 - 61.24, 61.30, 61.40 - 61.44, 61.46 - 61.49, 61.80, 61.105 - 61.108, 61.110 - 61.112

The amendments and new rules are proposed under Texas Occupations Code, Chapters 2052 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 2052 and Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§61.10. Definitions.

The following words and terms have the following meanings:

[~~(1) Amateur--A person who engages in a contest or exhibition where no cash prize is awarded to participate and who has never received any purse or other article of value, other than the maximum amount established by an amateur organization recognized by the Department.~~]

[~~(2) Bout /or contest--A combative sporting event wherein contestants use their best effort to prevail through knockout, technical knockout, judges decision, pinning or any other manner authorized by the Executive Director.~~]

(1) [~~(3)~~] Chief second--The second designated by the contestant as the primary advisor or assistant to the contestant.

(2) [~~(4)~~] Code--The Texas Occupations Code, Chapter 2052, "Combative Sports".

[~~(5) Combative Sport--Boxing, wrestling, kick boxing, shoot wrestling, pancration fighting/wrestling, shoot fighting/wrestling or any form of competition in which a blow is struck.~~]

[~~(6) Commission--The Texas Commission of Licensing and Regulation~~]

(3) [~~(7)~~] Contestant--Any participant , including a professional combative sports contestant, who competes in a combative sport event regulated by the [~~Texas Occupations~~] Code [~~, Chapter 2052~~].

(4) [~~(8)~~] Deadwood--The numerical difference between tickets printed and tickets used.

[~~(9) Event--An organized series of individual contests or bouts.~~]

(5) Knock-down--A knock-down occurs when any part of a contestant's body, other than his feet, contacts the floor of the ring or fighting area as a result of a blow struck to the contestant by an opponent.

(6) [~~(10)~~] License or Registration--A document issued by the Executive Director permitting a person to participate at an event or perform a function regulated by the Code [~~in a particular profession or trade~~].

(7) [~~(11)~~] Manager--A person who, under contract, agreement, or other arrangement with a contestant undertakes to directly or indirectly, control, or administer a professional combative sports [~~the~~] contestant's [~~professional~~] affairs.

(8) [~~(12)~~] Matchmaker--One who arranges matches for professional combative sports contestants.

(9) [~~(13)~~] Person--Any natural person, corporation, partnership, association or other similar entity.

(10) [~~(14)~~] Purse--The financial guarantee or any other remuneration promised to contestants for participating in an event [~~a contest~~] and includes guarantees for cable pay per view, radio, television or motion picture rights.

[~~(15) Promoter--Any person or entity that produces, stages, arranges, advertises or conducts a combative sport contest.~~]

(11) [~~(16)~~] Ring Officials--Referees, judges, ringside physicians and timekeepers.

(12) [~~(17)~~] Ringside Physician--An individual licensed to practice medicine by the Texas State Board of Medical Examiners , and registered with the Department.

(13) [~~(18)~~] Second--A person who provides assistance or advice to a contestant during a contest.

[~~(19) Shoot (or shooto) wrestling/fighting or Pancration (or Pankraton, Pankration) wrestling/fighting--A form of full contact martial arts in which opponents may, while standing strike with the open hand, kick, wrestle, throw, grapple and submit.~~]

(14) [~~(20)~~] Technical Zone--A restricted alcoholic beverage freearea [~~marked by a barrier~~] between the ringside and a department approved barrier. [~~the first row of seats. There must be at least eight feet between the edge of the ringside table farthest from the ring and first row of seats~~].

(15) [~~(21)~~] Timekeeper--A person who is the official timer of the length of rounds/heats and the intervals between rounds/heats and counts when a contestant is down.

(16) Full Contact--Contact made while intentionally striking a blow with any part of the body to an opponent when the contact has the potential to temporarily disable or to injure an opponent.

§61.20. General Licensing Requirements [~~for Ring Officials and Contestants~~].

(a) Professional combative sports contestants [~~Contestants~~], promoters, referees, judges, seconds, matchmakers, managers, timekeepers, and ringside physicians who officiate or participate in a regulated [~~an~~] event , other than a regulated amateur event, authorized by the [~~Combative Sports~~] Code must be licensed or registered by the Executive Director.

(b) Amateur combative sports associations must be registered by the Executive Director.

(c) [~~(b)~~]) If a licensee or registrant ,other than a contestant or a second, changes his [~~/her~~] address of record, the licensee or registrant shall inform the Executive Director in writing of the change within 30 days of the change.

[~~(c) A corporate or non-individual license holder shall notify the Executive Director of any change of ownership of 25% or greater and of new or additional officers or directors within 30 days of the change.~~]

(d) Each applicant must submit a completed application or renewal form and the appropriate fees.

[~~(e) All licensees under the Code and these rules shall behave in a professional manner and at all times pertinent to the event, exhibit the highest degree of sportsmanlike conduct.~~]

[~~(f) All licensees and registrants shall furnish all information required by the Department in a reasonable time period.~~]

[~~(g) All licensees and registrants shall carry out the terms and conditions of contracts to which they are parties.~~]

[~~(h) All contestants, managers, seconds, and referees must attend the referee's rules meeting prior to a bout.~~]

(e) [~~(i)~~] All licensing requirements should be completed at least 72 hours before a contest.

[~~(j) To participate in an event from the weigh-in until its conclusion, a licensee, upon request, shall present to department personnel his or her department issued ring official's or contestant's license. Failure to do so may result in the licensee being denied access to the event other than as a ticket holder.~~]

§61.21. Licensing Requirements--Referees.

(a) To qualify for a new license as a referee, an applicant must:

(1) be at least 21 years of age;

(2) not have been convicted of a felony;

(3) demonstrate the ability to perform the functions of a referee by:

(A) having completed a training program provided by, or approved by the Executive Director, that consists of classroom training and an internship program; or,

(B) meeting one or more of the following;

(i) having at least three years active experience as a referee in the combative sport in which he seeks endorsement by having officiated in at least ten combative sporting events per year;

(ii) being currently licensed as a referee in a state that the Executive Director has determined has licensing requirements that are equivalent to Texas' requirements; or

(iii) having formerly held a Texas referee's license that lapsed in good standing.

(b) Referee licenses will be endorsed with one or more of the following legends:

(1) B (Boxing);

(2) KB (Kick-boxing); and

(3) MMA (Mixed martial arts).

(c) An endorsement may be obtained by completion of classroom training and an internship program provided or approved by the Executive Director for that class of endorsement.

(d) Persons renewing licenses, or obtaining new licenses on the basis of holding a license from another state or formerly having held a Texas license, may obtain one or more endorsements by providing proof acceptable to the Executive Director of previous experience refereeing contests in the class of endorsement(s) sought.

(e) After February 28, 2007, referees must have an endorsement for a class in order to referee events in that class.

(f) To obtain or renew a license, a referee must provide test results showing visual acuity in each eye of at least 20/40 corrected. The test must have been performed by a licensed Optometrist or licensed Ophthalmologist no more than one year before the application for licensure or license renewal is filed.

§61.22. Licensing Requirements--Judges.

To qualify for a new license as a judge, an applicant must:

(1) be at least 21 years of age;

(2) not have been convicted of a felony; and,

(3) demonstrate the ability to perform the functions of a judge by:

(A) having observed and completed score cards for all contests in at least five events while under the supervision of the Department and scoring the contests in keeping with standards established by the Executive Director; or,

(B) meeting one or more of the following:

(i) having at least three years active experience as a judge and/or referee by having officiated in at least ten combative sporting events per year;

(ii) being currently licensed as a referee in a state that the Executive Director has determined has licensing requirements that are equivalent to Texas' requirements; or

(iii) having formerly held a Texas judge's license that lapsed in good standing.

§61.23. General Prohibitions.

(a) Judges, Timekeepers, Matchmakers, Referees and Ringside Physicians may not have a direct or indirect financial interest in any contestant.

(b) Contestants and ring officials licensed under the Code may not participate in an illegal event.

(c) Persons under the age of 17 will not be issued a license. Minors age 17 but not yet 18 may be issued a contestant's license with a notarized written consent from a parent or guardian. A person age 36 or older applying for a contestant's license shall also submit a report of favorable physical testing including but not limited to an EEG (electroencephalography), and an EKG (electrocardiogram). The applicant may request an administrative hearing if the Executive Director determines the physical testing results are not favorable in any way and fails to issue a license for that reason.

(d) A matchmaker may not act as, and may not be licensed as; a contestant, ring official or second.

(e) A promoter may not act as, and may not be licensed as; a referee, timekeeper, or judge. A promoter may be licensed as a manager and as a second. A promoter may be licensed as a contestant unless prohibited by Federal law.

(f) No person shall be allowed to participate in a contest performing a function for which a license is required, unless the person has proof of identification and a current license. Acceptable proof of identification includes driver's licenses, passports, state issued identification cards, federal identification boxing cards, or any other identification required by the Executive Director.

(g) A Contestant may not act as, and may not be licensed as a Judge.

(h) A Person who is an officer or director of a Ranking Organization may not act as, and may not be licensed as a Judge.

§61.24. Practice Requirements--General

(a) All licensees and registrants shall behave in a professional manner and at all times pertinent to the event, exhibit the highest degree of sportsmanlike conduct.

(b) All licensees and registrants shall carry out the terms and conditions of contracts concerning combative sports events regulated by this state to which they are parties.

(c) From the weigh-in until an event's conclusion, a licensee, upon request, shall present to department personnel his license. Failure to do so may result in the licensee being denied access to the event other than as a ticket holder.

§61.30. Responsibilities and Authority of the Executive Director [~~Department~~].

(a) The Executive Director , or his designee, [~~may designate another employee of the agency or contract employee to act in his/her stead in all matters under these rules and the Texas Occupations Code, Chapter 2052.~~]

[~~(b) The representative for the Executive Director in charge of a contest~~] has complete authority over all phases of an event [~~a contest~~], including, but not limited to the weigh-in, matching of contestants, entrance to the forum, passes to the technical zone, audit of ticket sales, and payment of purses.

(b) [~~(c)~~] For all professional contests, the Executive Director will assign the timekeepers, referees, ringside physicians and judges.

(c) [~~(d)~~] In title and championship contests [~~fights~~], the Executive Director will consult with the sponsoring or sanctioning bodies [~~body~~] on the assignment of judges and referees. The Executive Director will make assignments for such contests [~~these fights~~].

(d) [~~(e)~~] The Executive Director [~~Department~~] may request [~~of a contestant,~~] medical tests to prove gender of a contestant.

(e) [~~(f)~~] The Executive Director may recognize and enforce disciplinary sanctions, disqualification, or medical suspensions imposed by other combative sport authorities. If the Executive Director proposes to deny licensure [~~is denied~~] based on action of [~~reciprocity with~~] another jurisdiction, the applicant has a right to an opportunity for a hearing.

(f) [~~(g)~~] Selection of Ring Officials

(1) The Executive director will assign [~~assignment of~~] ring officials [~~will be made~~] on a rotational basis from lists [~~a list~~] of licensees and registrants. Assignments will be [~~are~~] made to ensure the highest degree of safety for [~~combative~~] contestants. The Department will assist license holders and registrants in developing expertise in the combative sports [~~sport~~] of their choice, to include training and shadow officiating.

(2) The key determining factors for assigning ring officials are:

(A) the [~~The~~] ring official's [~~officials'~~] level of expertise in connection with the level of expertise required for a particular contest and a particular combative sport;

(B) the location of the event [~~fight~~];

(C) the location of the licensee's [~~licensees~~] residence; and

(D) any other factors as determined by the Executive Director.

(3) A [~~If a~~] ring official who declines to work an event, [~~that official~~] will miss his [~~/her~~] rotation.

(4) The name of [~~If~~] a ring official who declines to work an event five times in succession [~~, he/she~~] will be taken off of the rotational list.

(5) In order to be reinstated on the rotation list, an official may be required to complete additional training as determined by the Executive Director.

(6) If a ring official under this subsection substitutes for another who declined to work an event, the substituting official does not lose his [~~/her~~] place on the rotational list.

(g) [~~(h)~~] The Executive Director [~~Department~~] shall assign two timekeepers for each event, one to keep time and one to count for knock-downs [~~knockdowns~~].

(h) [~~(i)~~] The Executive Director [~~Department representative~~] may eject any person from an event who violates Department rules or the Code.

(i) [~~(j)~~] The Executive Director [~~Department~~] will not approve matches between contestants in different weight categories, except by weight tolerances as stated in §61.105.

(j) [~~(k)~~] The Executive Director [~~Department~~] will not approve matches between genders.

(k) [~~(l)~~] The Executive Director [~~or his/her designee~~] may waive the application of a rule to an event if he determines that such waiver will not negatively affect the safety of any contestant and that the spirit of the Code and these rules is served by such waiver [~~circumstances justify a waiver~~]. The waiver must be in writing or later confirmed in writing.

(l) [~~(m)~~] Licensure or registration does not automatically authorize an individual to participate in an event.

(m) [~~(n)~~] A decision rendered after a contest shall not be changed unless the Executive Director, after a review [~~Department determines that the compilation~~] of the [~~referee and~~] judges' scorecards, finds that [~~scorecard shows~~] a clerical or mathematical error resulted in an incorrect [~~that caused the~~] decision.

(n) [~~(o)~~] The Executive Director [~~Department~~] may approve championship or title contests if the Department has recognized the sponsoring sanctioning organization as a legitimate combative sport organization.

[~~(p) Department representatives may check the number of gate ticket containers. They may also check the containers for seals or padlocks. Tickets shall be accounted for after the event and a Department representative may review that process.~~]

(o) [~~(q)~~] The Executive Director [~~Department~~] may require of a contestant, neurological or other medical testing.

(p) [(r)] The Executive Director [Department] may order a drug screen at any time for good cause. If a drug screen is performed, the contestant is responsible for paying the costs of the drug screen.

(q) [(s)] The Executive Director [Department] shall have sole control over the Technical Zone including but not limited to who may be admitted to the zone [and to assure that no alcoholic beverages are allowed].

§61.40. Responsibilities of the Promoter.

(a) Bond and Insurance Requirements for Promoters

(1) At the time of licensure and upon each renewal, a promoter [A Promoter] applicant must submit to the Department proof of financial responsibility [and insurance requirements. Financial responsibility may be shown] by:

[(A) submitting a current financial statement prepared by a certified public accountant, showing liquid working capital of $10,000 or more; or]

(A) [(B)] submitting a $10,000 surety [performance] bond written by a bonding company authorized to do business in the state of Texas guaranteeing payment of all obligations , except gross receipts taxes, arising out of events promoted by the applicant which shall remain in effect for four years after the effective cancellation date [relating to the promotional activity]; and

(B) [(C)] submitting a $15,000 surety bond, written by a bonding company authorized to do business in the State of Texas, guaranteeing payment of gross receipts taxes owed for promoted events, which shall remain in effect for four years after the effective cancellation date.

(2) The promoter shall provide insurance and pay all deductibles for contestants, to cover medical, surgical and hospital care with a minimum limit of $20,000 for injuries sustained while participating in a contest and $50,000 to a contestant's estate if he dies of injuries received while participating in a contest. The insurance premium and deductibles shall not be deducted from the contestant's purse. At least ten calendar days before an event the promoter shall provide to the Department for each event sponsored, a certificate of insurance showing proper coverage. The promoter shall supply to those participating in the event the proper information for filing a medical claim.

(b) A Promoter shall:

(1) Bear all financial responsibility for the event.

(2) Provide the Department written notice of all proposed event dates, ticket prices, and participants of the main event, at least 21 days before the proposed event date and obtain written approval from the Department to promote the event prior to advertising or selling tickets.

(3) Obtain written departmental approval for the fight card at least 10 working days before the event date. The request shall contain the full legal name, address, date-of-birth, Texas contestant license number, Federal Identification number, weight, previous fight record (by supplying current results from the contestant's registry recognized by the Professional Boxing Safety Act of 1996, 15 USC §§6301-6313), and number of rounds to be fought for each contestant. In addition, the Department may require submission of certified birth certificates or other official evidence of identification.

(4) Provide written notice to the Department of any change in the card before the scheduled weigh-in. Notices announcing changes or substitutions in the card must also be conspicuously posted at the box office and announced from the ring before the opening contest.

(5) Provide to the Department, written notice of any change in the announced or advertised location, time or card cancellations before the scheduled weigh-in.

(6) Provide two ringside physicians, registered by the Department, for each event.

(7) Provide at least one registered physician to conduct pre-fight physicals. The Department may require additional physicians depending on the event size. Provide a private area for the ringside physician to perform pre-fight examinations.

(8) Assure that beverages are only allowed in paper or plastic cups at the event.

(9) Immediately after the event, compensate the ringside physicians, timekeepers, judges, referees and contestants. Payment of percentage contracts shall be made when the amount can be determined. Payments that do not require additional accounting or auditing, shall be made in the presence of an authorized Department representative.

(10) Provide no less than two private dressing rooms of adequate size for the contestants and their licensed managers, and seconds, and separate dressing rooms for male and female contestants. Only working Commission employees, contract inspectors, media, physicians, licensed working ring officials, promoter, matchmaker, manager and seconds will be allowed in the dressing rooms.

(11) Ensure [Assure] that no alcoholic beverages or illegal drugs are in the dressing room.

(12) Ensure the safety of the contestants, officials, and spectators.

(A) There shall be a pre-fight plan and route to remove an injured contestant from the ring and arena. Upon request, the promoter shall inform the Department of these plans. The plan shall include the name and location of a local hospital emergency room.

(B) A sufficient number of security personnel shall be retained to maintain order.

(13) Schedule no less than 24 or more than 60 rounds for each event. [Contests between males shall have no more than three-minute rounds with one-minute rest periods between rounds. Contests between females shall have no more than two-minute rounds with one-minute rest periods between rounds.] No event shall exceed 10 rounds, except a championship or title contest, which shall not exceed 12 rounds. A sparring or exhibition event shall not exceed three rounds.

(14) Prior to advertising a championship or title contest, file with the Department the contestants' contracts.

[(15) Contestants opposing one another must wear gloves manufactured by the same company with the same brand name, model and weight.]

(15) [(16)] Ensure that the rules set forth below regarding equipment and gloves that apply to a particular type of event are followed and that each event is conducted in compliance with the following [each event has the appropriate equipment to include]:

[(A) The ring shall be square with sides not less than 16 feet or more than 24 feet inside the ropes. The floor shall extend at least 24 inches beyond the ropes on all sides. The ring floor shall be of at least 3/4-inch material, adequately supported, and padded with ensolite or similar closed-cell foam that is at least 1-inch thick.]

[(B) The padding shall extend over the edge of the ring platform and have a top covering of canvas, duck, or similar material approved by the Department.]

[(C) The covering shall be clean and be tightly stretched and laced to the ring platform and may not have tears, holes or overlapping seams.]

[(D) The ring platform shall have at least three sets of steps into the ring during a contest: one set for each contestant's corner and one set in the neutral corner to be used for the ringside physician and the Department.]

[(E) The ring corners shall be protected inside the ring with a urethane pad at least six inches wide, and shall be covered with material similar to the ring floor covering, and the covering must be long enough to cover all the rope joints.]

[(F) Ring posts shall be made of a strong material, preferably steel, and shall be at least three inches in diameter. The post shall be secured under the ring to prevent spreading. The ring shall be set up at least two hours before the contest is scheduled to begin.]

[(G) There shall be four ring ropes at least one inch in diameter evenly spaced, one foot apart. The lower rope shall be 18 inches above the ring floor. The ropes shall be attached to the ring posts with turnbuckles and shall be stretched taut during all contests. The bottom rope shall be padded with at least 2 inch of soft material;]

[(H) A bell that makes a sound loud enough to be heard by the contestants, referee, and other officials.]

[(I) An appropriate receptacle for spitting in each contestant's corner, clean water bucket for the contestants' use, and at least three chairs or stools in each contestant's corner. The chairs shall be labeled "seconds" and shall be used only by the contestant's official seconds.]

[(J) New gloves for all main events. If gloves used in preliminary contests have been used before, they shall be whole, clean, in sanitary condition, and subject to inspection by the referee and Department representatives. Any gloves found unfit shall not be used and must be replaced with acceptable gloves. There shall be extra sets of gloves on hand to be used in case gloves are broken or in any way damaged during a contest.]

[(K) Contestants in all weight categories up to, and including welterweights, shall use eight-ounce gloves. In heavier classes, they may wear ten-ounce gloves. Female contestants may wear 10-ounce gloves.]

[(L) Gloves shall be kept in the possession of the promoter and shall be made available for inspection by the Department for a minimum of seven days after a contest.]

(A) [(M)] The ring apron shall be kept clear at all times of objects including, but not limited to: cameras, microphones, and advertisements. A separate camera platform at a neutral corner of the ring for use by cameramen may be provided. Cameramen may be allowed on the ring apron during rest periods, between bouts, or at the discretion of the Executive Director. No seats may be sold at the ring apron.

(B) [(N)] The Technical Zone shall be set up for the Department , according to the Executive Director's instructions.

(C) [(O)] All emergency medical personnel and portable medical equipment shall be located within the Technical Zone during the event. There must be a resuscitator, oxygen, stretcher, a certified ambulance, and an emergency medical technician on site for all contests. The Executive Director may require additional medical personnel and equipment depending on the number of matches [bouts] scheduled.

(D) [(P)] The judges' chairs shall be high enough that their shoulders shall be no lower than the ring floor. Physician ringside seats shall be in the neutral corner(s).

(E) [(Q)] There shall be at least one, but no more than three, authorized promoter representative(s) at ringside at all times. Only the promoter's representative(s), Department officials, the press, physicians, representatives of sanctioning bodies, and judges shall sit at the ringside tables.

(16) [(17)] In the event that a person who is intended to be a Contestant is not licensed at the time of the weigh-in it is the promoter's responsibility to pay the licensing fee by check ,or money order. No cash [or other forms of payment] will be accepted.

(c) Contract requirements between Promoter and Contestant.

(1) The promoter for an event shall have contracts with contestants executed in triplicate on Department forms showing the amount of guarantee or percentage promised, the number and time limit of rounds, when and where the contestants are scheduled to appear, weight category, and other pertinent details governing the event. If applicable, the compensation section must include the specifics of television, radio and cable rights. The contract must define and provide for agreement on compensation if the opponent fails to appear at the weigh-in or bout. All contracts must state the dollar amount or percentage withheld for expenses, taxes, advances, sanctions or any other items the promoter seeks to subtract from a contestant's purse.

(2) The promoter shall furnish one executed copy of the contract to the contestants or their managers, retain one, and submit one to the Department.

(3) All required information must be typed or legibly printed, and the contestant and promoter shall initial any changes or addenda.

(d) Tickets

(1) All tickets shall have printed on each half, the price including any service surcharge or handling fee [the promoter's license number], and event date.

(2) Roll tickets with consecutive numbers shall be sold only at the box office on the day of the show.

(3) If there is no ticket manifest, tickets [Tickets] of different prices shall be printed on different colored ticket stock.

(4) The promoter shall submit a sworn inventory to the Department of tickets delivered to any outlet or event sponsor. The inventory shall account for any known overprints, changes, or extras.

(5) Tickets shall not be sold for more than the actual capacity of the location where the event is held.

(6) All tickets shall be torn in half and one half returned to the ticket holder at the entrance gate. The other half shall be immediately deposited in a sealed container, where it is to remain until the Department's representative witnesses the opening of the container. No one shall pass through the gate without having their ticket torn or shall occupy a seat unless holding a ticket half or have a working pass or credential with a specific seat assignment indicated on them. Passes and or credentials may not be sold or bartered.

(7) If a main event or special added attraction is postponed or cancelled for any reason, the promoter shall promptly refund ticket sales. A special added attraction is the appearance of any person or persons at any boxing event whose reputation or ability is calculated to increase attendance. Tickets in the hands of ticket services shall be

returned to the promoter not later than when the box office at the boxing event site has closed.

(8) Promoters shall hold tickets of every description used for any event for at least 30 days after the event. The tickets shall be kept in separate packages for each event for audit purposes.

(9) When computing gross receipts, the face value of tickets, except deadwood, shall be included whether the tickets were sold for cash, given away, or bartered for services provided.

(10) Tickets shall be accounted for after the event and the Executive Director may review the process, and may check the number of gate ticket containers and their seals or padlocks.

(e) A promoter shall submit to the Department a tax report and a 3% gross receipts tax payment within three business days of [~~72 hours after~~] an event.

§61.41. Responsibilities of the Referee.

(a) Referees are responsible for enforcing the rules of the contest and shall exercise immediate authority, direction and control over contests. The referee shall conduct a rules meeting before the first bout of the event.

(b) The referee may eject from an event any person who violates the Code or Department rules. If a second violates these rules or the Code, the referee may disqualify the seconds' contestant.

(c) If an assigned referee is unable to officiate, he shall notify the Department at least five hours before the contest.

(d) The safety of contestants should be the primary concern of the referee at all times. The referee may stop any contest:

(1) where there is reason to believe that continuing may result in serious injury to either contestant;

(2) if a contestant cannot defend himself;

(3) because of an injury or a contestant's poor physical condition; or

(4) if the referee feels that a contestant is not fighting in earnest.

(e) If a contestant is accidentally fouled, including a head butt but can continue, the referee may stop the contest, for a reasonable time, and inform the judges and the contestant's second of the accidental injury.

[~~(f) If the contestant who is knocked down does not rise before the count of ten, the referee shall declare him the loser by a knockout. If the contestant appears to be seriously injured, the referee may summon the ringside physician into the ring, and declare the bout terminated by knockout.~~]

(f) [~~(g)~~] If a mouthpiece is knocked out, the referee shall call time during a break in the action, the contestant's second will clean and reinsert the mouthpiece. If the mouthpiece is spit out the same procedure will be followed and the referee can charge the contestant with a foul.

(g) [~~(h)~~] The referee or Executive Director may disqualify a contestant and declare the opponent the winner after one warning by the referee or Department representative for the use of profanity, obscene or threatening gestures by a contestant, his manager, or his second.

(h) [~~(i)~~] When a foul occurs, the referee shall call time and advise the judges of the foul and the number of points they should deduct.

(i) [~~(j)~~] Before each bout, the referee shall call the contestants and their chief seconds together for final instructions. The referee shall hold the chief second responsible for his contestant's conduct during the contest.

(j) [~~(k)~~] When a low blow incapacitates a contestant, the referee shall give him reasonable time to recover. The referee may confer with the ringside physician. If a contestant shows an unwillingness to continue because of a low-blow claim, and the referee has resumed the fight, that contestant shall be declared the loser by a technical knockout.

(k) [~~(l)~~] Knock-downs.

(1) When a blow to [~~punch knocks~~] a contestant causes a knock-down [~~down~~], the referee shall order the opponent to go to the ring's farthest neutral corner, pointing to the corner, and immediately pick up the timekeeper's count.

(2) The referee shall audibly announce the passing of the seconds, accompanying the count with upward motions of his arm for each second and indicating the count with visual finger counts after each second.

(3) The referee shall stop counting if the opponent does not remain in the neutral corner until the count is complete.

(4) A [~~No~~] contestant who is knocked down shall not be allowed to resume [~~boxing~~] until the referee has finished counting to eight.

(5) If a contestant who is knocked down rises before the count of ten and goes down again without being struck, the referee shall resume the count where he stopped.

(6) When a round ends before a contestant who was knocked down rises, the bell shall not ring, and the count shall continue. If the contestant rises before the count of ten, the bell shall ring ending the round.

(7) If the contestant who is knocked down does not rise before the count of ten, the referee shall declare the opponent the winner by a knockout.

(8) If the contestant appears to be seriously injured, without beginning a count, the referee may summon the ringside physician into the ring, and declare the bout terminated by knockout.

(9) [~~(7)~~] The referee's count is the official count.

(l) [~~(m)~~] If a contestant does not answer the bell signifying the start of a round, the referee shall give a ten count and declare him the loser by a technical knockout.

(m) [~~(n)~~] If a contestant who has been knocked out of the ring or has fallen out of the ring during the contest fails to return immediately, the referee shall give the contestant 20 seconds to return to the ring. After a 20 second count, if the contestant has not returned to the ring, the referee shall count the contestant out as if he were down. No one may help contestants back into the ring.

(n) [~~(o)~~] If during the first four rounds a contestant is accidentally injured, and is unable to continue, or is pushed, knocked or falls out of the ring, and is injured by the fall and unable to return, the referee shall declare the bout a no decision. If such injury occurs during later rounds, all completed rounds and the partial round in which the bout is terminated shall be scored and the contestant ahead on points shall be declared the winner by technical decision.

(o) [~~(p)~~] [~~A referee applicant must have at least three years active experience as a referee in the combative sport he/she wishes to be licensed. Active experience means officiating in at least ten combative~~

~~sporting events per year. The Executive Director may approve licensure for persons with comparative experience in any combative sport~~] A licensed referee may act as a judge or a timekeeper.

[~~(q) A referee must provide proof of testing by a licensed Optometrist or licensed Ophthalmologist of eye sight at least 20/40 corrected. The test must have been conducted no more than one year before the contest to be refereed.~~]

(p) All referees must attend the rules meeting prior to the first contest of an event.

§61.42. Responsibilities of Judges.

(a) A majority vote of the judging officials decides the outcome of the contest.

(b) If an assigned judge is unable to officiate, he shall notify the Department at least five hours before the contest.

(c) If a contest is stopped before the end of the fourth round because of an accidental foul, the contest shall be declared a no decision. If after the fourth round an accidental foul injury occurs or worsens and the contest is stopped, all completed and partial rounds shall be scored. The contestant ahead on points shall be declared the winner by technical decision.

(d) Scoring shall be recorded only on a [~~the~~] Department-approved form. Once the form is completed, checked and signed by the official it must be given directly to the Department supervisor for the event. Scoring forms are the property of the Department and will be maintained in the official records of the event.

(e) In all contests, the total points the [~~referee and~~] judges give each contestant may be announced.

(f) [~~A judge applicant must have at least three years active experience as a judge and/or referee in the combative sport he/she wishes to be licensed. Active experience means officiating in at least ten combative sporting events per year. The Executive Director may approve licensure for persons with comparative experience in any combative sport.~~] A licensed judge may act as a timekeeper.

(g) A judge will at all times during a contest maintain focus on the contest even during rest periods. In order to maintain focus, judges will not engage in distractions including but not limited to: talking, taking photographs, or carrying materials not related to the contest.

§61.43. Responsibilities of Seconds.

(a) Each contestant must have two seconds unless the Department permits otherwise. Each contestant shall have one chief second.

(b) The seconds shall dress neatly.

(c) Seconds shall keep their corners clean, dry, and free from objects.

(d) Seconds may surrender for their contestants by standing on the apron and signaling to the referee.

(e) A second may not:

(1) excessively coach a contestant during a round and shall remain silent when instructed to do so by a Department representative or the referee;

(2) throw excessive amounts of water on his contestant;

(3) toss a towel or any other object into the ring in token surrender of his contestant;

(4) use any unapproved substance [~~solution~~] during the contest.

(f) Seconds [~~A second~~] shall remain seated in the chairs provided during the rounds.

(g) If a second deliberately worsens a cut by spreading or tearing it, the referee may disqualify the contestant.

(h) Only one second shall be allowed in the ring between rounds, and he shall leave the ring enclosure at the timekeeper's warning. Two seconds will be allowed on the ring apron. All seconds and all obstructions including stools, buckets and equipment shall be off [~~leave~~] the ring platform [~~promptly~~] when the bell sounds for the beginning of the next round [~~, removing all obstructions including stools, buckets and equipment~~].

(i) A second shall be responsible for a contestant's corner supplies.

(1) Approved supplies are ice , which [~~(no loose ice) all ice~~] must be in an ice bag or Department approved container, water, cotton swabs, gauze pads, clean towels, Adrenalin 1:10,000, Avitene, Thromblin, petroleum jelly or other surgical lubricant, medical diachylon tape, and Enswel. All coagulants shall be in a container with the proper manufacturer's label and not contaminated by any foreign substance. The use of unapproved substances may result in disciplinary action.

(2) All containers shall be properly labeled with the manufacturer's label and not contaminated by any foreign substance.

(3) The use of an unapproved substance may [~~shall~~] result in disciplinary action. [~~No loose ice may be used in the corner and all ice must be in an ice bag or other suitable container.~~]

(4) Only water shall be permitted for hydration [~~dehydration~~] of a contestant between rounds. Honey, glucose, or sugar, or any other substance may not be mixed with the water. Electrolyte solutions are prohibited.

(5) Excessive use of any lubricant on the contestant's body, arms or face is prohibited.

(j) When the ringside physician enters a contestant's corner, the second in the ring shall yield immediately to the physician's examination without interference. The referee will call time out until the physician completes the examination. This will permit the corner the full rest period to administer to their contestant. The Department may disqualify a contestant, manager and/or second for unprofessional conduct in failing to cooperate with the ringside physician.

(k) A second must attend the referee's rules meeting conducted prior to the first contest of an event.

§61.44. Responsibilities of Managers.

(a) Managers shall deal fairly with contestants.

[~~(b) Contracts between a contestant and a manager must be in writing.~~]

(b) [~~(c)~~] It is the contestant and manager's joint responsibility to comply with all requirements, including rest periods and medical suspensions.

(c) Managers must attend the referee's rules meeting conducted prior to the first contest of an event.

§61.46. Responsibilities of Ringside Physicians.

Ringside physicians shall perform the following duties:

(1) perform medical examinations on contestants at the weigh-in to include a review of a contestant's answers to medical questions on the application. Only the contestant, his manager, his

chief second, the ringside physician, and Department representatives are allowed in the examination room during the physical;

(2) remain at ringside at all times during the scheduled bouts;

(3) immediately examine a contestant who suffers a knockout, concussion, or other head injury; and

(4) conduct a post contest examination that includes the physician's recommendations for rest periods, medical disqualification, and any other exam results. Results of the post contest examination shall be reported to the Department within one hour after an event. A contestant shall automatically receive medical suspensions/rest periods for the following:

(A) cut--Medical suspension time based on physician's recommendation.

(B) technical knockout--Minimum of 30-day medical suspension.

(C) knockout--60-day minimum medical suspension for the first knockout. If a contestant has had two knockouts within 12 months, he shall be medically suspended for a minimum of 120-days. If he has had three knockouts within 12 months, or three consecutive knockouts, he will be medically disqualified from further competition;

(D) mandatory rest--All contestants shall receive a mandatory rest period as recommended by the ringside physician.

§61.47. Responsibilities of Contestants.

(a) Medical Examinations. Each contestant applying for a license, or license renewal, shall submit on a department approved form signed by an examining physician and an examining ophthalmologist proof of having passed a comprehensive medical examination within [~~with~~] thirty days of the date the application is signed by the applicant. The exam must include an ophthalmologic medical examination completed by an Ophthalmologist only and must indicate that the applicant is free of Hepatitis B & C viruses and human immunodeficiency virus (HIV).

(b) A contestant applicant must submit to the Department all information required by the Department's application.

(c) A contestant may not perform under any name that does not appear in departmental records.

(d) Contestants shall in good faith perform to the best of their abilities.

(e) A contestant who commits a foul under these rules is subject to administrative sanctions and or penalties in addition to losing points during a contest.

(f) Arguing with an official or refusing to obey the orders of an official is prohibited.

(g) Contestants shall compete in proper ring attire. [~~Male contestants must wear a protection cup, which shall be firmly adjusted before entering the ring.~~] The trunks' waistband shall not extend above the waistline and the hem may not extend more than two inches below the knee. Ring attire may not have sequins, buttons, tassels or any other decorative items that may become detached during a contest. A fitted mouthpiece shall be worn while competing. Shoes shall be of soft material and shall not be fitted with spikes, cleats, or hard heels. Contestants may not participate in any contest while wearing jewelry, including but not limited to, watches, rings, necklaces, bracelets, earrings, any type of stud used to penetrate body piercings. [~~Female contestants must wear garments that cover their breasts.~~]

(h) All contestants shall be in the dressing room at least 45 minutes before the event is scheduled to begin. The contestants shall be ready to enter the ring immediately after the preceding contest is finished.

(i) After receiving final instructions from the referee, contestants may touch gloves or shake hands and then shall retire to their corners.

(j) After the referee or judge's decision has been announced, both contestants and their seconds shall leave the ring when requested to do so by the referee.

[~~(k) Female contestants shall submit to a pregnancy test at weigh-in.~~]

[~~(l) Female contestants may wear breast protection plates.~~]

(k) [~~(m)~~] Every contestant shall undergo a pre-fight physical examination. If a contestant's physical exam shows him unfit for competition, the contestant shall not participate in the contest. The manager , chief second, or contestant shall make an immediate report of the facts to the promoter and the Department.

(l) [~~(n)~~] If a contestant becomes ill or injured and cannot take part in a contest for which he is under contract, he , his chief second, or his manager shall immediately report the facts to the promoter and the Department. The contestant must submit to the Department medical proof of the injury or illness.

(m) [~~(o)~~] A [~~positive pregnancy,~~] Hepatitis B or C, or human immunodeficiency virus (HIV) test will result in disqualification.

(n) [~~(p)~~] The administration or use of any drugs or alcohol [~~24 hours before or~~] during, or up to 24 hours before a contest is prohibited unless a drug is prescribed, administered or authorized by a licensed physician and the Executive Director authorizes the contestant to use the drug. If a contestant is taking prescribed or over the counter medication, he/she must inform the Executive Director of such usage at least 24 hours prior to the contest.

(o) [~~(q)~~] As a condition of licensure, contestants waive right of confidentiality of medical records relating to treatment or diagnosis of any condition that relates to the contestant's ability to participate in a contest. All medical records submitted to the Department are confidential, and shall be used only by the Executive Director or his/her representative for the purpose of ascertaining the contestant's ability to be licensed or participate in a contest.

[~~(r) Contestants may not compete against a member of the opposite sex.~~]

(p) [~~(s)~~] Medical disqualification of a contestant is for his own safety and may be made at the recommendation of the examining physician or the Department. If a contestant disagrees with a medical disqualification, medical suspension or rest period set at the discretion of a ringside physician or a disqualification set by the Department, he may request a hearing to show proof of fitness. The hearing shall be provided at the earliest opportunity after the Department receives a written request from the contestant or his manager.

(q) The following are gender specific provisions.

(1) Male contestants must wear a protection cup, which shall be firmly adjusted before entering the ring.

(2) Female contestants:

(A) Must wear garments that cover their breasts;

(B) Shall submit to a pregnancy test at weigh-in;

(C) Will be disqualified by a positive pregnancy test; and,

(D) May wear breast protection plates.

(r) Contestants must attend the referee's rules meeting conducted prior to the first contest of an event.

~~[(t) Any licensee who competes outside the State of Texas and receives a medical suspension shall report the fight results and medical suspension to the Department within 72 hours after the event.]~~

~~[(u) Contestants may not participate in any bout while wearing jewelry, including but not limited to watches, rings, necklaces, bracelets, earrings, any type of stud used to penetrate body piercings, or other removable decorative items.]~~

§61.48. Responsibilities of Amateur Combative Sports Associations.

(a) An amateur combative sports association (ACSA) must provide to the Department proof that it is either a non-profit organization chartered by the State of Texas or that it is approved as a non-profit organization under the provisions of the Internal Revenue Code.

(b) An ACSA shall file with the Executive Director rules for conducting the organization's affairs and the conduct of its members. The rules:

(1) Must include provisions to:

(A) Establish conditions for membership;

(B) Provide guidelines for training its members in preparation for a contest;

(C) Establish a minimum training period before a contest;

(D) Indicate which class(es) of combative sports the ACSA will conduct;

(E) Require that all referees participating in events conducted by the ACSA are licensed by the Department; and,

(F) Either:

(i) Adopt, as appropriate, rules set out below for boxing, kickboxing, mixed martial arts, and muay thai; or,

(ii) Establish the ACSA's rules for a class or classes of events it will sponsor; and,

(2) May include provisions to:

(A) Provide for payment of actual expenses, up to an established maximum, for the contestant participate in an event; and,

(B) Allow members of other ACSAs to participate as a visiting member in an event conducted by it without the other ACSA participating in the conducted event, so long as it ascertains that the visiting member is qualified under the rules to be a contestant in the event.

(c) An ACSA may not conduct or participate in any event unless it has received Executive Director's written approval of rules required in subsection (b) above.

(d) An ACSA that has adopted rules permitted under subsection (b)(2) above must, before it sponsors or participates in any event, submit to the Executive Director a $15,000 surety bond, written by a bonding company authorized to do business in the State of Texas, guaranteeing payment of gross receipts taxes owed for promoted events, which shall remain in effect for four years after the effective cancellation date.

(e) An ACSA shall provide insurance and pay all deductibles for contestants, to cover medical, surgical and hospital care with a minimum limit of $20,000 for injuries sustained while participating in a contest and $50,000 to a contestant's estate if he dies of injuries suffered while participating in a contest. At least ten calendar days before an event the ASCA shall provide to the Department for each event to be conducted, a certificate of insurance showing proper coverage. The ASCA shall supply to those participating in the event the proper information for filing a medical claim.

(f) An ACSA shall ensure that all contestants participating in contests it conducts are amateurs.

(g) An ACSA may not allow any person who has not been a member of the ACSA for at least thirty days to participate as a contestant in any event in which the ACSA participates.

(h) An ACSA conducting an event shall:

(1) Bear all financial responsibility for the event.

(2) Provide the Department written notice of all proposed event dates, ticket prices, and participants of the main event, at least 21 days before the proposed event date and obtain written approval from the Department to promote the event prior to advertising or selling tickets.

(3) Provide two licensed physicians, for each event.

(4) Provide at least one licensed physician to conduct pre-fight physicals. Provide a private area for the physician to perform pre-fight examinations.

(5) Assure that beverages are only allowed in paper or plastic cups at the event.

(6) Assure that no alcoholic beverages or illegal drugs are in the dressing room.

(7) Ensure the safety of the contestants, officials, and spectators.

(A) There shall be a pre-fight plan and route to remove an injured contestant from the ring and arena. Upon request, the promoter shall inform the Department of these plans. The plan shall include the name and location of a local hospital emergency room.

(B) A sufficient number of security personnel shall be retained to maintain order.

(8) Ensure that the rules set forth herein below regarding equipment and gloves that apply to a particular type of event are followed.

(9) Ensure that each contest is conducted as provided by the ACSA's rules approved by the Department.

(10) Ensure that each event has the appropriate equipment as described by the ACSA's rules approved by the Department.

(11) Ensure that all advertising concerning an event to be conducted indicates that it is an amateur event, and includes the name of the ACSA that will conduct the event.

(i) Tickets

(1) All tickets shall have printed on each half, the price including any service surcharge or handling fee, and the event date.

(2) Roll tickets with consecutive numbers shall be sold only at the box office on the day of the show.

(3) If there is no ticket manifest, tickets of different prices shall be printed on different colored ticket stock.

(4) Tickets shall not be sold for more than the actual capacity of the location where the event is held.

(5) ACSA's shall hold tickets of every description used for any event for at least 30 days after the event. The tickets shall be kept in separate packages for each event for audit purposes.

(j) An ACSA shall submit to the Department a tax report and a 3% gross receipts tax payment within three business days after an event.

§61.49. Certain Amateur Events.

Amateur events conducted by organizations that are exempt from licensing and bonding requirements pursuant to Occupations Code, §2052.110, must be reported to the Department three working days before the event noting the time, date, location, and the name of the sponsoring organization.

§61.80. Fees.

(a) The annual fee shall accompany each license or registration application or renewal as follows.

(1) Promoter--$900

(2) Contestant--$30

(3) Manager--$200

(4) Second--$30

(5) Matchmaker--$175

(6) Referee--$250

(7) Judge--$ 200

(8) Timekeeper--$40

(9) Ringside Physician--$25

(10) Amateur Combative Sports Association - $50. [~~Each additional endorsement for Promoters--$50 (boxing, kickboxing, shoot wrestling, or elimination tournaments.~~]

(b) Four [~~Two~~] year Federal Identification card--$20.

(c) Permit Fee--$500 per live professional event and the simultaneous telecast of a live contest on a closed circuit telecast in which fees are charged for admission.

(d) A fee submitted to obtain a license, permit or registration is nonrefundable.

§61.105. Weight Categories and Weigh-in--Boxing and Kickboxing.

(a) A Promoter shall assure that the weigh-in takes place at a specific time set by the promoter and approved by the Department, generally between the hours of 2 p.m. of the day before the contest and 12 noon the day of the contest. The Department must be notified ten days before the event.

(b) Physician's scales must be used for weighing-in contestants. The Department may require that the scales be certified.

(c) Contestants failing to meet contract weight shall have two hours to meet the allowances and be reweighed.

(d) No contestant may engage in a contest where the weigh-in weight difference between contestants exceeds the allowance shown in the following "WEIGHT ALLOWANCE" schedule:

(1) 112 lbs. or under 3 lbs.

(2) 113 [~~112~~]-118 lbs. 4 lbs.

(3) 119-126 lbs. 5 lbs.

(4) 127-135 lbs. 6 lbs.

(5) 136-147 lbs. 8 lbs.

(6) 148-160 lbs. 10 lbs.

(7) 161-175 lbs. 12 lbs.

(8) 176-190 lbs. 15 lbs.

(9) 191 [~~190~~] lbs. or over - No limit

(e) If a contestant's body weight at the time of weigh-in is 5% or more over his contracted weight, he shall be disqualified for the contest.

(f) If in an attempt to make weight, a contestant shows evidence of dehydration, having taken diuretics, or other drugs, or having used any other harsh modality, the Department shall disqualify the contestant on the advice of the examining physician.

§61.106. Ring and Glove Requirements--Boxing and Kickboxing Contests.

(a) The ring shall be set up at least two hours before the contest is scheduled to begin.

(b) Except as specifically otherwise authorized by the Executive Director, rings shall meet the following:

(1) Rings shall be square with sides not less than 16 feet or more than 24 feet inside the ropes, and the floor shall extend at least 24 inches beyond the ropes on all sides, and shall be of at least 3/4-inch material, adequately supported, and padded with ensolite or similar closed-cell foam that is at least 1-inch thick;

(2) The padding shall extend over the edge of the ring platform and have a top covering of canvas, duck, or similar material approved by the Department;

(3) The covering shall be clean and be tightly stretched and laced to the ring platform and may not have tears, holes or overlapping seams;

(4) The ring platform shall have at least three sets of steps into the ring during a contest: one set for each contestant's corner and one set in the neutral corner to be used for the ringside physician and the Department;

(5) The ring corners shall be protected inside the ring with a urethane pad at least six inches wide, and shall be covered with material similar to the ring floor covering, and the covering must be long enough to cover all the rope joints;

(6) Ring posts shall be made of a strong material, preferably steel, and shall be at least three inches in diameter, and shall be secured under the ring to prevent spreading;

(7) There shall be four ring ropes at least one inch in diameter evenly spaced, one foot apart with the lower rope being 18 inches above the ring floor;

(8) The ropes shall be attached to the ring posts with turnbuckles and shall be stretched taut during all contests, and the bottom rope shall be padded with at least 2 inches of soft material;

(9) Be equipped with a bell that makes a sound loud enough to be heard by the contestants, referee, and other officials; and,

(10) Include in each contestant's corner an appropriate receptacle for spitting ,a clean water bucket for the contestant's use, and at least three chairs or stools labeled "seconds" to be used by the contestant's official seconds.

(c) New gloves must be used for all professional main events. If gloves used in preliminary contests have been used before, they shall be whole, clean, in sanitary condition, and subject to inspection by the

referee and Department representatives. Any gloves found unfit shall not be used and must be replaced with acceptable gloves. There shall be extra sets of gloves on hand to be used in case gloves are broken or in any way damaged during a contest.

(d) Contestants in all weight categories up to, and including 147 lbs, shall use eight-ounce gloves. In heavier classes, they may wear ten-ounce gloves. Female contestants may wear 10-ounce gloves.

(e) Promoters of professional events shall keep gloves used in an event in their possession for a minimum of seven days after the event and shall make them available for inspection by the Department upon request.

§61.107. Boxing.

(a) All rules stated herein apply to the combative sport of boxing, with the exception of §§61.108 - 61.112, unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) In scoring a contest the elements of offense, defense, clean hitting, ring generalship, and sportsmanship shall be carefully considered by the judges. Scoring shall be by the ten-point must system. The winner of any round is marked ten and the loser is marked nine or less. When a round is even, each contestant shall receive ten points. A clean knock-down [~~knockdown~~] shall be scored heavily. Judges shall deduct points for fouls when directed to do so by the referee. Judges [~~Referees and judges~~] shall clearly write their decision and sign them individually. A draw shall be called if each official votes differently or any two vote a draw.

(c) A contestant shall be deemed down when:

(1) any part of his body other than his feet is on the ring floor; or

(2) he is hanging over the ropes in a defenseless manner.

(d) The following tactics are fouls and are forbidden. Using these tactics may result in a warning, loss of points as determined by the referee, disqualification, forfeiture, and an administrative penalty and/or sanction.

(1) Hitting below the belt.

(2) Holding an opponent with one hand and hitting him with the other.

(3) Hitting an opponent who is down or is getting up after being down.

(4) Holding an opponent or deliberately maintaining a clinch.

(5) Butting with the head or shoulder or using the knee.

(6) Hitting with the inside or butt of the hand, the wrist or the elbow.

(7) Hitting or "flicking" with open gloves.

(8) Wrestling, kicking or roughing at the ropes.

(9) Purposely going down without being hit.

(10) Striking deliberately at the area of the body around the kidneys.

(11) Jabbing an opponent's eyes with the thumb of a glove.

(12) Using abusive or profane language.

(13) Hitting at the back of the head or neck (rabbit punches).

(14) Failing to obey the referee.

(15) Engaging in any physical action or contact other than sportsmanlike boxing, which may injure another contestant.

(16) Spitting out a mouthpiece.

(17) Hitting an opponent after the bell has sounded ending a round.

(e) Contests between males shall have no more than three-minute rounds with one-minute rest periods between rounds. Contests between females shall have no more than two-minute rounds with one-minute rest periods between rounds.

§61.108. Kickboxing.

(a) All rules stated herein apply to the combative sport of kickboxing, with the exception of §§61.107 and 61.110 [~~61.09~~]-61.112 unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) Kickboxing matches shall not exceed nine twominute rounds with a oneminute rest period between rounds. The Department may, however, permit an additional two rounds for championship events.

(c) Kickboxers shall not wear shoes of any type, except for protective padded footgear.

(d) Male contestants must wear a foulproof groin protector. A plastic cup with an athletic supporter is adequate, but an abdominal guard is preferable. Female contestants must wear foulproof breast protectors. Plastic breast covers are adequate. Female contestants must also wear a pelvic guard to protect their hips. Foot and shin pads are required.

(e) Each Kickboxing contestant must execute a minimum of six kicks during each round. If either fighter does not do so, he will automatically lose the round. If both contestants fail to execute the minimum number of kicks by the end of a round, the round is declared a draw. In any match of nine or more rounds, if either fighter fails to execute the minimum number of kicks in any three rounds, he automatically loses the fight. In a non-title fight, if either fighter fails to execute the minimum number of kicks in any two rounds, he loses the fight.

(f) A contestant intentionally avoiding any physical contact with his or her opponent will receive a warning. If a contestant continues avoiding contact, he or she will be declared the loser of that round. If a contestant avoids contact after losing a round for that reason, he or she may be subject to the same penalties and procedures as a contestant guilty of foul tactics.

(g) In any case where the referee decides that the contestants are not honestly competing, that the knockout is a "dive", or the foul is a prearranged termination of the bout, he or she will not finish the knockout count, disqualify the contestant for fouling, or render a decision, but shall stop the bout and declare it ended not later than before the end of the last round. If the event is professional, he [~~He~~] shall also order purses of both fighters held pending investigation and disposition of the funds by the Department.

(h) No contestant shall leave the ring during the oneminute rest period between rounds. If any contestant fails or refuses to resume fighting when the bell sounds for starting the next round, the referee will award a knockout victory to his or her opponent as of the round that has just been finished. If the event is professional and the circumstances indicate to the referee the need for an investigation or disciplinary action, the referee will not make a decision and will order the purse or purses of either or both contestants withheld.

(i) Before a fallen contestant resumes fighting after having been knocked to, slipped to, or fallen to the floor, the referee shall wipe the contestant's gloves free of any foreign substance.

(j) The following tactics are fouls and are forbidden. Using these tactics may result in a warning, loss of points as determined by the referee, disqualification, forfeiture, and an administrative penalty and/or sanction.

(1) Head butts, elbow strikes or clubbing, kicks, punches or any other strikes at the groin.

(2) Attacking with the knees.

(3) Openhand attacks to the eyes or throat.

(4) Striking at that part of the body over the kidneys or spine.

(5) Spitting, slapping or biting.

(6) Palm heel strikes (using the heel of the palm of the hand to deliver a blow to the face).

(7) Arm bars (grabbing one arm with the other and pressing the grabbed arm against the opponent's throat).

(8) Grabbing or holding onto an opponent's leg or foot and grabbing or holding onto any other part of the body except for the purpose of attempting to throw the opponent to the floor.

(9) Leg checking (extending the leg to check an opponent's leg or prevent him or her from kicking).

(10) Purposely going down without being hit.

(11) Any un-sportsmanlike trick or action causing any injury to an opponent.

(12) Attacking on the break.

(13) Attacking after the bell or gong has sounded ending the round or when the opponent is out of the ring.

(14) Intentionally pushing, shoving or wrestling an opponent out of the ring with any part of the body.

§61.110. Martial Arts.

(a) All full-contact martial arts are forms of a combative sport.

(b) All rules stated herein apply to martial art competitions with the exception of §§61.106, 61.107, 61.108, [~~61.107 - 61.109~~] and 61.112, unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(c) If a [~~A~~] contest or exhibition of a martial art is not conducted pursuant to §61.111 or §61.112 of these rules, it must be conducted pursuant to the official rules for the particular art, which must be filed with and approved by the Department.The sponsoring organization or promoter must file with and obtain permission of the Executive Director prior to holding the contest.

§61.111. Mixed Martial Arts[~~including Shoot wrestling/fighting or Pancrase wrestling/fighting~~].

(a) All rules stated herein, except §§61.106- 61.108, and 61.112 apply to mixed martial arts contests [~~apply to the combative sport of shoot wrestling/fighting with the exception of §§61.107 - 61.110 and §61.112~~] unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) Contestants may wear fingerless gloves weighing not less than 4 ounces, which shall be supplied by the promoter and approved by the Executive Director.

(1) If both contestants wear gloves, closed fist punching and frontal palm/heel strikes are permitted.

(2) If both contestants are not wearing gloves, frontal palm/heel strikes and closed fist punches are not permitted, except to the body.

(c) Contestants may prevail by technical knockout, knockout, submission, (either by physical or verbal tap out,) disqualification or judges decision.

(d) Scoring Techniques.

(1) Using the 10-Point Must Scoring System, judges are required to determine a winner of a contest that ends after the scheduled number of rounds have been completed. Ten points must be awared to the winner of each round and 9 points or less must be awarded to the loser, execpt for a rare even round, which is scored a 10-10.

(2) Judges must evaluate mixed martial arts techniques, such as effective striking, effective grappling, fighting area control, and effective aggressiveness/defense.

(e) [~~(d)~~] Contestants may wear shorts, trunks, wrestling singlet, or traditional martial arts Gi , unless otherwise instructed by the Executive Director. Knee braces without metal are permissible. Contestants may not wear shoes of any kind during competition. A male contestant may not wear a shirt during competition.

(f) Each contestant must be clean and present a tidy appearance. The use of grease or any other foreign substance, including, without limitation, grooming creams, lotions or sprays, may not be used on the face, hair or body of a contestant. The referee or the Executive Director's representative shall cause any foreign substance to be removed.

(g) [~~(e)~~] Contestants who wear gloves may wrap hands in a manner approved by the Executive Director. [~~If contestants wear gloves , they may wrap hands.~~] If contestants are not wearing gloves, it is not permissible to wrap hands, but wrists may be taped. Contestants who choose to wear gloves, may only compete with other contestants wearing gloves. Contestants choosing not to wear gloves, may only compete with other contestants who choose not to wear gloves.

(h) Weight Divisions. Except with the approval of the Executive Director, the classes for mixed martial arts contest or exhibitions and the weights for each class are shown in the following schedule:

(1) Flyweight--up to 12 lbs.

(2) Bantamweight--over 125 to 135 pounds

(3) Featherweight--over 135 to 145 pounds

(4) Lightweight--over 145 to 155 pounds

(5) Welterweight--over 155 to 170 pounds

(6) Middleweight--over 170 to 185 pounds

(7) Light Heavyweight--over 185 to 205 pounds

(8) Heavyweight--over 205 to 265 pounds

(9) Super Heavyweight--over 265 pounds

(i) [~~(f)~~] Non-championship contests [~~Contests~~] shall not exceed a total of 15 minutes per contest [~~bout~~] with no overtime allowed. Championship contests shall not exceed a total of 25 minutes of action. Rounds shall be a minimum of three minutes [~~are allowed two five-minute overtimes~~] with a one-minute rest period between each round.

(j) [~~(g)~~] A fitted mouthpiece shall be worn while competing.

(k) [~~(h)~~] A male contestant [~~Male contestants~~] must wear a plastic foul-proof groin protector (abdominal guard). A female contestant [~~Female contestants~~] must wear a plastic pelvic guard and may wear a breast protector.

(l) [~~(i)~~] Contestants may use the ropes once during a round. The second time a contestant grabs the ropes will be considered a submission.

(m) [~~(j)~~] Intentionally escaping from the fighting area [~~ring~~] will result in a rope call.

(n) [~~(k)~~] If both contestants wrestle into or under the ropes and the referee believes that the ropes are causing interference with the match, the referee may stop the action, and require both contestants to take a standing position in the middle of the fighting area before continuing the match. [~~put both contestants in a standing position in the middle of the ring and continue the match~~].

(o) [~~(l)~~] If both contestants are wrestling on the ground and the referee believes neither contestant will gain an advantage, the referee may stop the contest, and require both contestants to take a standing position in the middle of the fighting area before continuing the match [~~put both contestants in a standing position in the middle of the ring and continue the match~~].

(p) Mixed martial arts contests may be conducted either in an approved ring or in an enclosed fighting area. The following specifics apply:

(1) Rings:

(A) Must be no smaller than 16 feet square and no larger than 32 feet square within the ropes. The ring floor must extend at least 18 inches beyond the ropes;

(B) The ring floor must be padded with ensolite or another similar closed-cell foam, with at least 1 inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge of the platform. Material that tends to gather in lumps or ridges may not be used;

(C) The ring platform must not be more than 4 feet above the floor of the venue and must have suitable steps or ramps for the use of the contestants and ring officials;

(D) Ring posts must be made of metal, not more than 3 inches in diameter, extending from the floor of the venue to a minimum height of 58 inches above the ring floor, and must be properly padded in a manner approved by the Executive Director. Ring posts must be at least 18 inches away from the ring ropes;

(E) There must be five ring ropes, not less than 1 inch in diameter and wrapped in soft material. The lowest rope must be 12 inches above the ring floor;

(F) There may not be any obstruction or object on the ring floor;

(2) Fighting Areas:

(A) May be circular or may be multi-sided having four or more sides that are equal in length. A circular fighting area must have a diameter of no less than 16 feet and of no more than 32 feet in length. For a multi-sided fighting area the shortest straight line distance between any two opposite sides must be no less than 16 feet and no more than 32 feet in length.

(B) The floor shall be constructed of material at least ¾ inch thick, adequately supported, and padded with ensolite or similar closed-cell foam that is at least one inch thick.

(C) Padding shall extend beyond the fighting area and over the edge of the platform, and have a top covering of canvas, duck or similar material approved by the Executive Director.

(D) The covering shall be clean and tightly stretched and laced to the fighting area platform and may not have tears, holes or overlapping seams.

(E) The fighting area platform shall not be more than 4 feet above the floor of the building and shall have suitable steps or ramps for use by the participants.

(F) Posts shall be made of metal not more than 6 inches in diameter, extending from the floor of the venue to between 5 and 7 feet above the canvas of the fighting area and, if inside the fenced area, shall be properly padded in a manner approved by the Executive Director.

(G) The fighting area shall be enclosed by a fence made of material that will not allow a contestant to fall out or break through it onto the floor or spectators; including, without limitation, chain-link fence coated with vinyl. Any metal portion of the fenced area must be covered and padded in a manner approved by the Executive Director and must not be abrasive to the contestants.

(H) A fence area must have 2 gated entrances on opposite sides of the fenced area.

(I) There must not be any obstruction on the fence surrounding the area in which the contestants compete.

(q) The promoter of a mixed martial arts event shall hang at least 2 video screens that meet the approval of the Executive Director and which allow the patrons to view the action inside the enclosed fighting area or ring.

(r) [~~(m)~~] If a laceration occurs, the referee may [~~shall~~] stop the contest and request the ring physician to [~~will~~] examine the laceration. Either the physician or referee can stop the contest.

(s) [~~(n)~~] The following tactics are fouls and may result in disqualification or point deduction at the discretion of the referee.

(1) Head butts [~~, side hand strikes, backhand slaps, elbow strikes or clubbing~~].

(2) Downward punching [~~Punching or frontal palm/heel strikes~~] while the opponent's head is touching the mat.

(3) Kicks, punches or any strikes to the groin.

(4) Spitting or biting.

(5) Striking or grabbing the throat area.

(6) Grabbing the trachea.

(7) [~~(6)~~] Kicking while the opponent is down on the mat.

(8) [~~(7)~~] Kneeing to the head of a grounded opponent [~~while grappling on the mat~~].

(9) [~~(8)~~] Kicking to the head of a grounded opponent [~~while both contestants are on the mat~~].

(10) [~~(9)~~] Hair pulling.

(11) [~~(10)~~] Engaging in any unsportsmanlike [~~Any un-sportsmanlike~~] conduct that causes an injury to an opponent.

(12) [~~(11)~~] Attacking on the break.

(13) [~~(12)~~] Attacking after the bell has sounded.

(14) [~~(13)~~] Intentionally pushing, shoving, wrestling, or throwing an opponent out of the fight area[~~ring~~].

(15) Holding the fence or the ropes.

(16) Using abusive language in the fighting area.

(17) [~~(14)~~] The use of any foreign [~~oily~~] substances [~~such as petroleum jelly or baby oil~~] on any contestant's hair, body or equipment.

(18) [~~(15)~~] Eye gouging of any kind.

(19) [~~(16)~~] Fish hooking.

(20) [~~(17)~~] Putting a finger into any orifice or into any cut or laceration on an opponent.

(21) [~~(18)~~] Small joint manipulation.

(22) [~~(19)~~] Striking to the spine or the back or the head.

(23) [~~(20)~~] Striking downward using the point of the elbow.

(24) [~~(21)~~] Clawing, pinching, or twisting the flesh.

(25) [~~(22)~~] Grabbing the clavicle.

(26) [~~(23)~~] Stomping a grounded opponent.

(27) [~~(24)~~] Kidney strikes of any kind.

(28) [~~(25)~~] Spiking an opponent to the canvas on his head or neck.

(29) [~~(26)~~] Holding the shorts or gloves of an opponent.

(30) [~~(27)~~] Flagrantly disregarding the instructions of the referee.

(31) Attacking an opponent who is under the care of the referee.

(32) [~~(28)~~]Timidity, including without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.

(33) [~~(29)~~] Throwing in the towel during competition.

(34) Interference by the corner.

(t) [~~(o)~~] The determination of the winner shall be as follows:

(1) by submission, either verbally or by tapping two or more times on the mat, ropes, ring corner or the opponents body;

(2) by knockout;

(3) by being down on the map for a ten count;

(4) by the referee disqualifying a contestant through a technical knockout;

(5) by the referee stopping a match based upon a ring physician's advice;

(6) by a contestant's corner stopping the bout;

(7) by the referee disqualifying a contestant for a violation of these rules; or

(8) by the judges decision based upon technique and aggressiveness minus the number of penalties.

§61.112. Muay Thai Fighting.

(a) All rules stated herein apply to the combative sport of muay thai fighting with the exception of §§61.107-61.111, unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) Muay Thai is competition in which a person utilizes punches, elbows, and knees [~~and grappling techniques while standing up~~].

(c) It is permissible to strike an opponent's legs, arms, body, face, and head using the shin, knee, gloved fist or elbow.

(d) Contests will be scheduled for no more than five three-minute rounds with two-minute rest periods.

(e) Contestants must wear gloves weighing not less than 8 oz.

(f) Ankles may be taped or wrapped with approved non-metallic medical wrap.

(g) Male contestants must wear a foul-proof groin protector. Female contestants must wear foul-proof breast protectors. Plastic breast protectors are adequate.

(h) Spinning back fist blows are allowed, so long as contact is made only with the padded part of the glove.

(i) The following tactics are fouls and may result in disqualification or the deduction of one or more points, at the discretion of the referee;

(1) Head butts;

(2) Striking a downed opponent;

(3) Kicks, punches or any strikes to the groin, kidneys, or spine;

(4) Pricking or pressing eyes;

(5) Spitting or biting;

(6) Striking the throat area;

(7) Hair pulling;

(8) Wrestling or throwing opponent to ground;

(9) Performing any illegal holding or wrestling technique not part of Muay Thai;

(10) Holding or stepping on one of the ropes while fighting, elbowing, or striking;

(11) Any un-sportsmanlike conduct;

(12) Attacking on the break;

(13) Attacking after the bell has sounded, and

(14) Throwing in the towel during competition.

(j) The determination of the winner shall be as follows:

(1) by knockout;

(2) by technical knockout;

(3) by points on judges' score cards, with at least two rounds of five-round fights being completed, if both fighters are injured or counted out, and are unable to continue;

(4) by the referee stopping a match based upon a ring physician's advice;

(5) by the referee stopping a match when one fighter is outclassing the other;

(6) by a contestants corner stopping the bout;

(7) by the referee disqualifying a contestant for a violation of these rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505109
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-7348

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16 TAC §61.21, §61.109

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, Chapters 2052 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 2052 and Chapter 51. No other statutes, articles, or codes are affected by the repeal.

§61.21. General Prohibitions.

§61.109. Elimination Tournaments/Toughman competitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

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William H. Kuntz, Jr.
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Texas Department of Licensing and Regulation
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CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.10, 74.20, 74.25, 74.30, 74.50, 74.55, 74.60, 74.65, 74.70, 74.75, 74.80, 74.85, 74.90

The Texas Department of Licensing and Regulation ("Department") proposes to amend existing rules at 16 Texas Administrative Code, Chapter 74, §§74.10, 74.20, 74.25, 74.30, 74.50, 74.55, 74.60, 74.65, 74.70, 74.75, 74.80, 74.85 and 74.90 regarding elevators, escalators, and related equipment.

Rule 74.10 Definitions is amended to delete the definition of "accident" since the term is clearly defined by statute. The definition of ASCE Code 21 is also deleted as the term is defined by statute and no addenda need to be included. Paragraph (17), unsafe elevator or escalator has been amended so that equipment that has any defect that presents a risk of serious injury is unsafe. Paragraph (18) is amended to delete the word "permanent" from the definition of waiver and to add the phrase "for an indefinite period of time."

Rule 74.20 Inspector Registration Requirements is amended to clarify rule language in several areas. It is also amended to delete the requirement that inspectors attend an annual meeting conducted by the department, and to provide that inspectors shall attend a meeting when the Executive Director determines that a meeting is needed. It is anticipated that such meetings will occur less frequently than annually.

Rule 74.25 Contractor Registration Requirements is amended to clarify procedures for contractor registration and registration renewals. It is also amended at subsection (d)(3) and (4) to provide that quarterly reports should include jobs performed as opposed to the requirement that they report jobs contracted.

Rule 74.30 Exemptions is amended to include all statutorily provided exemptions.

Rule 74.50 Reporting Requirements--Building Owner is amended at subsection (a)(2) to require reports for each unit of equipment in a building rather than the current requirement for reports for a unit of equipment. Subsection (b)(1) is amended to provide that tenants or occupants shall be notified of certain delays. Subsection (c) requiring owners to submit in writing the status of all delays is deleted. Subsections (c), (d) and (e) as amended, clarify references to codes.

Rule 74.55 Reporting Requirements--Inspector is amended at subsection (a) to change a filing deadline from ten working days to ten calendar days to comply with the statute. Subsection (b) is deleted and a new subsection (c) is amended to replace working days with calendar days.

Rule 74.60 Standards of Conduct for Inspector or Contractor Registrants is amended at subsection (e)(6) to delete the reference to an employee or a full or partial owner.

Rule 74.65 Advisory Board is amended to delete the sentence providing that the Board consists of 13 members since the size of the Board is prescribed by statute.

Rule 74.70 Responsibilities of the Building Owner is amended at subsection (a) to remove the requirement for an owner to contract or employ an inspector and replace it with the requirement to obtain services of a registered inspector. Subsection (c) is amended to require that maintenance and inspection records be available in the building rather than requiring that copies be kept in the building. Subsection (d) is amended to add a reference to the statute. Subsection (e) is amended to require that persons performing inspections must be registered with the department. Subsection (k)(1)(A) is amended to specify maximum and minimum heights at which certificates must be displayed. Subsection (k)(2) is amended to provide for display of escalator certificates or identifier plaques within 10 feet of the entry and the exit of an escalator and to delete the requirement for display in the escalator box as the interior of the box may not be visible to the public. Subsection (n)(2) is added to require reinspection and certification when equipment has been determined to be unsafe or if cosmetic alterations to an elevator cab has made the elevator unsafe. Subsection (n) has been added to require the owner to have copies of all waivers and delays in the machine room for use by elevator personnel.

Rule 74.75 Responsibilities of the Inspector has been amended at subsection (a)(4) to replace the requirement that the person performing safety tests sign inspection reports with a requirement that the building owner sign the reports. Subsection (a)(7) is added to provide that equipment shall not be used by the public until the equipment is completely installed and all work is completed. Subsection (c)(1) is amended to clarify the placement of test tags.

Rule 74.80 Fees is amended to remove subsection (a)(4) setting a fee for inspector education programs, and other subsections are amended to clarify the rule language.

Rule 74.85 Responsibilities of the Department is amended by adding subsection (d) to provide that the department may review inspection reports.

These amendments are necessary to clarify the language of the rules and to bring the rules into closer compliance with statutory provisions.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be that elevator personnel and elevator users will have clearer explanations concerning installation, maintenance, inspection and certification of equipment.

There will be no effect on small or micro-businesses as a result of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the rules as amended.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Health and Safety Code, Chapter 754 and Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51.

§74.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) The Act--Texas Health and Safety Code, Chapter 754, Elevators, Escalators, and Related Equipment.

(2) Altered Equipment--Any changed equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement.

[~~(3) ASCE Code 21--The Automated People Mover Standards--Part 1, ASCE 21-96, Part 2, ASCE 21-98, and Part 3, ASCE 21-00.~~]

(3) [~~(4)~~] ASME--American Society of Mechanical Engineers, a nationally recognized professional engineering society.

(4) [~~(5)~~] ASME A17.1--The ASME A17.1-2000 "Safety Code for Elevators and Escalators" and A17.1a-2002 and A17.1b-2003 Addenda.

(5) [~~(6)~~] ASME A17.2-2001--The Guide for Inspection of Elevators, Escalators, and Moving Walks.

(6) [~~(7)~~] ASME A17.3--The ASME A17.3-2002, "Safety Code for Existing Elevators and Escalators".

(7) [~~(8)~~] ASME A18.1--The ASME 18.1-1999, "Safety Standards for Platforms Lifts and Stairway Chairlifts" and the A18.1-2001 addenda.

(8) [~~(9)~~] Automated People Mover (APM)--a guided transit mode with fully automated operation, featuring vehicles that operate on guideways with exclusive right of way.

(9) [~~(10)~~] Building Owner--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(10) [~~(11)~~] Contractor--A person, partnership, company, corporation, or other entity engaging in the installation, repair, or maintenance of equipment. The term does not include an employee of a contractor.

(11) [~~(12)~~] Delay--Postponement of compliance with a requirement of the applicable ASME Safety Codes, for a specific period of time.

(12) [~~(13)~~] Existing Equipment--equipment installed or altered before September 1, 1993.

(13) [~~(14)~~] Inspection report--A Department approved form used by the inspector to report the inspection results of one unit of equipment.

(14) [~~(15)~~] New Equipment--equipment installed or altered on or after September 1, 1993.

(15) [~~(16)~~] Publicly visible area of building--a location that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any elevator is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(16) [~~(17)~~] Unsafe elevator or escalator--A condition which exists due to a [~~design, mechanical, structural, or electrical~~] defect which presents a risk of serious bodily injury.

(17) [~~(18)~~] Waiver--Deferral [~~Permanent deferral~~] of compliance with a requirement of the applicable ASME Safety Codes for an indefinite period of time..

§74.20. Inspector Registration Requirements.

(a) An applicant [~~individual~~] registering with the Department as an inspector [~~for the first time~~] shall submit a completed application for registration on the forms provided by the Department.

[~~(1)~~] A completed application shall include:

[~~(A) the registration form with all blanks completed;~~]

(1) [~~(B)~~] the original application [~~applicable~~] fee referenced in §74.80; and

(2) [~~(C)~~] a copy of both sides of a valid [~~the~~] ASME QEI-1 elevator safety inspector certification card.

(b) [~~(2)~~] Inspectors must complete [~~attend~~] an orientation session approved [~~conducted~~] by the Department regarding Department forms, [~~and~~] inspection procedures , and applicable law and rules.

(c) Registration renewal applications must be filed by the registration expiration date.

[~~(b) The renewal registration shall be on the first anniversary of the date of issuance of the inspector's registration.~~] Inspectors shall submit a completed registration renewal application [~~for renewal~~] on forms provided by the Department.

[~~(1)~~] A completed renewal application shall include:

[~~(A) the renewal form with all blanks completed;~~]

(1) [~~(B)~~] the renewal application [~~applicable~~] fee referenced in §74.80; and

(2) [~~(C)~~] a copy of both sides of a valid [~~the~~] ASME QEI-1 elevator safety inspector certification card.

(d) [~~(2)~~] Inspectors shall attend a law and rules update [~~an annual~~] seminar conducted by the Department as part of their [~~the~~] requirements to renew their registration, when determined by the Executive Director.

[~~(3) Inspectors must attend an annual Department sponsored or Department approved seven (7) hour continuing education program in order to renew registration.~~]

(e) [~~(c)~~] The inspector shall notify the Department in writing within 30 days of any changes to information submitted on the application or renewal forms.

§74.25. Contractor Registration Requirements.

(a) A person registering with the Department as a contractor [~~for the first time~~] shall submit a completed application for registration on the forms provided by the Department. A complete application shall include the original application fee referenced in §74.80. [~~:~~]

[~~(1) the registration form with all blanks completed, and~~]

[~~(2) the applicable fee referenced in §74.80.~~]

(b) Registration renewal applications must be filed by the expiration date. Contractors shall submit a completed registration renewal application on forms provided by the Department. A completed contractor registration renewal application shall include the renewal application fee referenced in §74.80.

[~~(b) The renewal registration shall be on the anniversary date of the contractor's registration. Contractors shall submit a completed application for renewal on forms provided by the Department.~~]

(c) The contractor shall notify the Department in writing within 30 days of any changes to information submitted on the application or renewal forms.

(d) Contractors must submit to the Department reports regarding installation, repair, alteration or maintenance jobs on a format approved by the Department.

(1) An initial report is due no later than 60 days of the application date and must include all jobs performed by the contractor during the two years prior to the application date.

(2) Quarterly reports are due each calendar year in accordance with the following schedule.

(A) 1st quarter--April 30

(B) 2nd quarter--July 31

(C) 3rd quarter--October 31

(D) 4th quarter--January 31 of the next year.

(3) Quarterly reports must include all jobs performed [~~contracted~~] in the quarter which have not been previously reported to the Department.

(4) The initial quarterly report must include all jobs performed [~~contracted~~] from the application date until the end of the quarter containing the application date, which have not been previously reported to the Department.

§74.30. Exemptions.

This chapter does not apply to : [~~buildings owned or operated by the federal government or to equipment regulated by a municipal inspection and certification program approved under §74.65(b).~~]

(1) buildings owned and operated by the federal government;

(2) equipment regulated by a municipal inspection and certification program approved under §74.65(b); and

(3) the following structures if access is limited primarily to employees:

(A) equipment in an industrial facility;

(B) grain silos;

(C) radio antennas;

(D) bridge towers;

(E) underground facilities; and

(F) dams.

(4) equipment located in a private building of less than three stories that is used exclusively by a labor union, trade association, private club, or charitable organization; and

(5) elevators located in a single family dwelling except as provided by Health and Safety Code, §754.0141.

§74.50. Reporting Requirements--Building Owner.

(a) To obtain a Certificate of Compliance, the building owner must submit to the Department within 60 days of the equipment inspection date, the following items:

(1) the application for Certificate of Compliance;

(2) a copy of the inspection reports for each [~~a~~] unit of equipment in a building;

(3) written documentation to verify that all violations of the applicable ASME code, cited on the inspection report, have been corrected or are under contract to be corrected;

(4) any application(s) for Delay or Waiver, if applicable; and,

(5) all applicable fees.

(b) All delay applications, received after September 1, 2003 to install door restrictor and fire service by September 1, 2010, must include the following on the delay application form or attach a statement to the delay application form:

(1) verification that the building owner has notified all tenants or occupants in the building that the elevators do not comply with the door restrictor or fire service requirements in the ASME A17.3--2002 Code and has made available to tenants or occupants upon request the building owner plan of compliance before 2010;

(2) the building owner plan of compliance before 2010; and

(3) compliance completion date.

[(c) The building owner must submit the status of all delays to the Department, in writing, on or before the expiration of each delay granted.]

(c) [(d)] The owner [Owner] shall notify the Department, in writing and within 30 days, of equipment that has been placed out of service. The equipment must be placed out of service in accordance with the definition in A17.1[-2000], *"installation placed out of service."*

(d) [(e)] The owner shall notify the Department, in writing and within 30 days, of an elevator that has had alterations converting the equipment to a material lift. The conversion shall comply with the applicable sections of A17.1 Part 7 [-2000 Section XIV].

(e) [(f)] The owner shall notify the Department, in writing and within 30 days, of a material lift that has had alterations converting the equipment to an elevator. The elevator must be inspected and brought into compliance with A17.1 as a new installation [-2000].

§74.55. Reporting Requirements--Inspector.

(a) For new installations or alterations and for equipment inspected and found without a decal, the inspector shall provide a copy of the Elevator Equipment Form to the Department within ten calendar [working] days after completing the inspection.

[(b) For annual inspections, the inspector shall notify the Department of the completion of the inspection by a method approved by the Department, within ten working days of the inspection date.]

(b) [(c)] The inspector shall clearly note on the inspection report any equipment found to be unsafe, and shall report it immediately by submitting a copy of the report to the building owner and to the Department.

(c) [(d)] Inspectors shall submit a copy of the inspection report to the building owner not later than the 10th calendar [working] day after the date of inspection.

§74.60. Standards of Conduct for Inspector or Contractor Registrants.

(a) *Competency*. The registrant shall be knowledgeable of and adhere to the Act, the rules, the ASME and ASCE Code, and all procedures established by the department for equipment inspections or performance of a contract to install, repair, or maintain equipment. It is the obligation of the registrant to exercise reasonable judgment and skill in the performance of equipment inspections or performance of a contract to install, repair, or maintain equipment.

(b) *Integrity*. A registrant shall be honest and trustworthy in the performance of equipment inspections or performance of a contract to install, repair, or maintain equipment, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited. The registrant shall accurately and truthfully represent to any prospective client his/her capabilities and qualifications to perform the services to be rendered.

(c) *Interest*. The primary interest of the registrant is to ensure compliance with the Act, the rules, and the ASME or ASCE Code. The registrant's position, in this respect, should be clear to all parties concerned while conducting equipment inspections or completing the performance of a contract to install, repair, or maintain equipment.

(d) *Conflict of Interest*. A registrant is obliged to avoid conflicts of interest and the appearance of conflicts of interest. A conflict of interest exists when an inspector performs or agrees to perform equipment inspections for a building in which he has a financial interest, whether direct or indirect. A conflict of interest also exists when a registrant's professional judgment and independence are affected by his/her family, business, property, or other personal interests or relationships. A registered inspector shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client, but then only upon reasonable notice to the client.

(e) *Specific Rules of Conduct.* A registrant shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the Standards adopted by the Commission;

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in equipment inspections or equipment contracts;

(3) state or imply to a building owner that the department will grant a delay or waiver;

(4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing equipment inspections or completing an equipment contract;

(5) perform equipment inspections or complete an equipment contract in a negligent or incompetent manner;

(6) perform equipment inspections or complete an equipment contract in a building or facility in which the registrant is an owner, either in whole or in part [, or an employee of a full or partial owner];

(7) perform equipment inspections in a building or facility wherein the registrant, for compensation, participated in the obtaining an equipment contract of the building;

(8) indulge in advertising that is false, misleading, or deceptive;

(9) misrepresent the amount or extent or prior education or experience to any client; or

(10) hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

§74.65. Advisory Board.

(a) [The board is comprised of 13 members and shall consist of those regulated industry members and consumers of services members specified in the Act and Government Code, Chapter 2110.] Board members will serve for staggered three year terms with two regulated industry positions and two consumer positions expiring in each of the first, second, and third years and one consumer position expiring in the third year. Terms shall expire November 1 of the third year of the member's term.

(b) If with the advice of the Elevator Advisory Board, the Executive Director determines that the standards of inspection and certification of a municipal inspection and certification program are at least equivalent to those contained in the Act, the municipal ordinance shall apply.

(c) Board meetings may be called by the Executive Director or the presiding officer.

§74.70. Responsibilities of the Building Owner.

(a) The building owner shall obtain the services of [must contract with, or employ] an inspector registered with the department to perform inspections in accordance with §74.75 and §74.100.

(b) The owner of the building in which equipment is located shall have such equipment inspected every twelve (12) months.

(c) The owner of the building in which the equipment is located must have available [~~keep a copy of~~] all maintenance and inspection records and maintenance control programs for [~~of~~] the equipment [~~in the building~~] during the life of the equipment as required by A17.1 Section 8.6. These records and programs shall be available in the building.

(d) The building owner or their representative must report all accidents , as defined in Texas Health and Safety Code, §754.011, involving equipment to the Department, using a Department approved form, within 72 hours of the accident.

(e) The building owner shall ensure that all of the tests required by ASME A17.1[~~--2000~~], Part 8, are made by a person qualified to perform such services and registered with the department. Such tests must be performed in the presence of the inspector. The person performing the test must be familiar with the operation of the equipment and available to accompany and assist during an inspection.

(f) If any equipment is determined to be unsafe, by inspection or other means, the building owner shall notify the Department in writing within 48 hours, and shall place the unsafe equipment out of operation until repairs to correct the unsafe condition(s) are completed. After repairs have been completed, the building owner shall submit written verification to the Department that the unsafe condition has been corrected.

(g) New equipment installations must be inspected and tested to determine their safety and compliance with the requirements of ASME A17.1 [~~2000~~], before being placed in service.

(h) Altered equipment must be inspected and tested to determine its safety and compliance with the requirements of ASME A17.1[~~-2000~~], and ASME A17.3[~~-2002~~] before being placed back in service.

(i) Existing equipment must be inspected and tested annually to determine its safety and compliance with the requirements of ASME A17.3[~~-2002~~].

(j) The owner of the building in which equipment is located must obtain a yearly certificate of compliance from the Department evidencing that each unit of equipment in the building is in compliance with the Act and all applicable rules and standards. The owner of the building must have a current Certificate of Compliance in order to operate equipment located in the building.

(k) The building owner must display the current Certificate of Compliance:

(1) if the certificate relates to an elevator,

(A) inside the elevator car not more than 7'0" or less than 3'0" above the finished car floor;

(B) outside the elevator car in the main elevator lobby within 10 feet of the elevator call button; or

(C) in a common area lobby or hallway location that is

(i) accessible to the public without assistance or permission during all hours in which any elevator is in operation and

(ii) identified by a plaque mounted in the elevator car or within 10 feet of the elevator call button in the main elevator lobby. The font size for letters on the plaque shall be at least 18 and the plaque must state that the elevator is regulated by the Texas Department of Licensing and Regulation and include the department's telephone number 1-800-803-9202 and the building management's telephone number.

(2) in a common area lobby or hallway location that is:

(A) accessible to the public without assistance or permission during all hours in which any escalator is in operation and

(B) identified by a plaque mounted within 10 feet of entry and exit of escalator in the main escalator lobby. The font size for letters on the plaque shall be at least 18 and the plaque must state that the escalator is regulated by the Texas Department of Licensing and Regulation and include the department's telephone number 1-800-803-9202 and the building management's telephone number.

[~~(2) in the escalator box if the certificate relates to an escalator,~~]

(3) on the box containing the control circuitry if the certificate relates to a chairlift, platform lift, automated people mover operated by cables, moving sidewalk, or related equipment.

(l) The building owner must display an inspection report at the location defined in subsection (k), selected by the owner, until a current certificate of compliance is issued by the Executive Director.

(m) The building owner must have [~~reinspect and recertify~~] equipment re-inspected and re-certified:

(1) if the equipment has been altered and determined to be unsafe; [~~or~~]

(2) determined to be unsafe;

(3) has had any cosmetic alteration made to the interior of elevator car enclosures or flooring that diminishes the level of safety or poses a risk of serious injury; or

(4) [~~(2)~~] if an inspection report shows an existing violation has continued longer than permitted in a delay granted by the executive director.

(n) The building owner shall have copies of all current department issued waivers and delays, posted in the machine room/machinery space in a readily accessible and visible location available to elevator personnel.

§74.75. Responsibilities of the Inspector.

(a) Inspection procedures.

(1) The inspector must inspect all equipment for compliance with the applicable standards as adopted in §74.100.

(2) Inspectors must use the ASME A17.2-2001, "Inspectors' Manuals" to conduct inspections and witness tests for compliance with the standards adopted by the Department.

(3) The inspector shall report to the building owner or agent before beginning any inspections.

(4) The [~~qualified person performing the safety tests, and the~~] inspector , and the building owner must sign and date the inspection report.

(5) The inspector shall not perform any of the safety tests.

(6) On new or altered equipment installations, the inspector may perform an inspection prior to the installation being completed. However, on these installations the Department will only accept inspection reports for final inspections performed by the inspector after the installation is completed.

(7) New or altered equipment installations shall not be permitted to be used by the public until the equipment is completely installed and all work is completed.

(b) Department forms.

(1) The inspector must use current Department approved forms for reporting inspections.

(2) The Department forms shall be filled out completely, and shall be used to report the all inspections of existing equipment and final inspections of new or altered equipment.

(3) The inspector must list all ASME Code violations by code rule number and code edition for each unit inspected, and include a written description of the violation on the Department Form. If the ASME Code refers to another code, the inspector must list both code rule numbers and include a written description of the violation.

(4) The inspector must provide his/her own inspection report form to report the results of an inspection to the owner of equipment located in a single-family dwelling.

(c) Inspector's Equipment.

(1) Test Tags

(A) The inspector must purchase test tags from the Department and shall be the person who attaches these tags to the inspection equipment.

(B) The inspector shall inscribe all required information on each test tag.

(C) Upon completion of the initial Acceptance test, Department test tags shall be attached to the equipment with wire rope and lead seal.

(D) The lead seal shall be crimped onto the wire rope using a crimping tool bearing the Department's seal and the crimping tool number assigned to the inspector.

(E) Inspector's equipment may be purchased from the Department for:

(i) $200 per 100 test tags (sold in multiples of 100); and

(ii) $10 per 100 wire ropes and lead seals (sold in multiples of 100).

(F) Test tags shall be attached to equipment as described below [~~in accordance with the following schedule~~]:

(i) Electric Elevators, Acceptance Tests, Category 1 (annual tests) and Category 5 (Five Year Tests). Tags shall be placed in the machine room/machinery space [~~--to the overspeed governor(s), safety releasing carrier, and each buffer or set of buffers~~]. Tags shall not be [~~removed and~~] replaced until after all date and signature spaces on the tag are filled.

(ii) Hydraulic Elevators, Acceptance Tests , Category 1 (annual test), Category 3 (three year tests), and Category 5 (Five Year Tests). Tags shall be placed in the machine room/machinery space. [~~- to the relief valve.~~] Tags shall not be [~~removed and~~] replaced until after all date and signature spaces on the tag are filled.

(iii) Escalators, Acceptance Tests. Attach tags[~~--~~]to the overspeed governor and/or emergency brake. Tags shall not be [~~removed and~~] replaced until after all date and signature spaces on the tag are filled.

(2) Decals

(A) Each unit of equipment shall be identified with a unique identification number decal issued by the Department, which the inspector must affix to the upper right hand corner of the control panel. The decal shall remain on the control panel for the life of the equipment.

(B) An additional Department decal shall not be affixed to equipment that has a current Department decal displayed.

(C) All correspondence and inspection reports shall reference the decal number and Department building ID number, as reflected on the Certificate of Compliance.

(D) If an inspector places a new decal on a unit of equipment to replace a lost or destroyed decal, the inspector must report the equipment's location and new decal number to the Department within ten days.

§74.80. Fees.

(a) Inspector registration fees. [~~:~~]

(1) original--$100[~~;~~]

(2) renewal application--$100[~~;~~]

(3) Revised/Duplicate registration card--$25[~~, and~~]

[~~(4) Department sponsored education program for inspectors--$50.~~]

(b) Certificate of Compliance filing fees:

(1) submitted by building owner with a [~~application and~~] copy of inspection report within 60 days of the equipment inspection date--$30 per unit of equipment;

(2) $10 late filing fee per each unit for every thirty (30) day period if the inspection report, filing fees, and verification about correcting deficiencies in the inspection report are filed after the 90th day from the equipment inspection date, and

(3) $25 per Revised/Duplicate Certificate.

(c) Waiver/delay application fee: $50 for each ASME Code violation, per unit of equipment, requested to be waived or delayed.

(d) Fees shall be charged and collected by the Department for a waiver or delay application for an institution of higher education.

(e) Contractor Registration fees[~~:~~]

(1) original--$300[~~;~~]

(2) renewal application--$300[~~; and~~]

(3) Revised/Duplicate registration card--$25[~~.~~]

[~~(f) Approval or certification of an education program not sponsored by the Department--$200.~~]

(f) [~~(g)~~] The fee for department personnel to disconnect power or lockout equipment in a building shall be $200 per hour. Travel and per diem costs shall be reimbursed by the building owner in accordance with the current rate as established in the current Appropriations Act. The department shall present a billing statement to the building owner or representative after disconnecting the power or lockout that is payable upon receipt unless the Department receives in writing verification that the expenses would be paid no later that the 10th day after the date power is reconnected or equipment is unlocked. The fee for department personnel to reconnect power or unlock equipment is the same to disconnect or lockout equipment.

(g) [~~(h)~~] Late renewal fees for Inspector and Contractor registrations issued under this Chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§74.85. Responsibilities of the Department.

(a) Issue Certificates of Compliance.

(1) Each certificate must include the decal number, inspection date, building name and physical address, owner name and mailing

address, inspector name and QEI #, current inspection date, the date of the last inspection, the due date of the next inspection, contact information at the department to report a violation, indicate status of correcting code violations and the Executive Director's signature and date.

(2) The Department shall use the following procedures to issue a Certificate of Compliance:

(A) review inspection report and fees submitted by building owner;

(B) review verification submitted by building owner indicating which code violations have been remedied and which code violations are under contract to be corrected;

(C) review delay/waiver application and fees submitted by building owner;

(D) notify building owner with a Notice of Incomplete Submittal asking for any missing inspection documents and fees; and

(E) notify building owner of any denied waiver or delay requests and ask for verification that violations have been remedied or under contract to be corrected.

(F) After a determination is made that the building owner submitted an inspection report with the correct amount of filing fees and all deficiencies in the inspection report have been corrected, or under contract to be corrected, or delay or waiver granted, then a certificate of compliance is issued for each unit of equipment.

(b) The Department shall provide notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment through the Department's website, press releases, and group presentations.

(c) The Department shall approve continuing education programs for registered QEI-1 certified Inspectors.

(1) Applicant must submit application form, copy of the course outline, resume of instructor who will teach, payment of all applicable fees, and any other information or data that is necessary to adequately describe or explain the course.

(2) The Department will issue a letter of approval or disapproval for the continuing education program.

(3) The Department will compile a list of approved continuing education programs for inspectors.

(d) The Department may periodically review inspection reports to determine compliance with the applicable statutes and administrative rules.

§74.90. Sanctions.

If a person violates Texas Health and Safety Code Annotated, Chapter 754, or a rule, or order of the Executive Director or Commission relating to the Act, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Act or Texas Occupations Code, Chapter 51, and 16 Texas Administrative Code, Chapter 60 and Chapter 74 [~~of this title (relating to the Texas Department of Licensing and Regulation)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505079

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-6208

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.706, §402.707

The Texas Lottery Commission (Commission) publishes for public comment proposed new Title 16, Part 9, Chapter 402, Subchapter G, §402.706 (relating to Standard Administrative Penalty Guideline) and §402.707 (relating to Expedited Administrative Penalty Guideline). New §402.706 will provide guidance for administering administrative penalties to persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. New §402.707 will provide an alternative disciplinary procedure for certain violations of the Bingo Enabling Act and the Charitable Bingo Administrative Rules, in which the Director of the Charitable Bingo Operations Division seeks to facilitate expeditious resolution of cases and encourage settlements.

The objectives for applying an administrative penalty are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This guideline is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage settlements.

The new rules are promulgated under Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Financial Administration has determined for the first five year period the new sections are in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the new sections. Any costs to the State could be absorbed by current resources. For each year of the first five years the sections will be in effect, the fiscal impact is the following: FY 05, $0, FY 06, $0; FY 07, $0; FY 08, $0, FY 09, $0. Additionally, there will be no significant effect on small businesses, micro businesses, or local or state employment as a result of implementing the new sections.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that for each of the first five years the new rules as proposed are in effect, licensees will benefit from the adoption as the new sections are designed to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

Comments on the proposed new rules may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 11:00 a.m. on November 30, 2005. Comments must be received within 30 days after publication of these proposed new rules in order to be considered.

The new sections are proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed new sections.

§402.706. Standard Administrative Penalty Guideline.

(a) The purpose of this section is to provide guidance for administering an administrative penalty to persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The objectives for applying an administrative penalty are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This guideline is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage settlements.

(b) The Commission, through the Director of the Charitable Bingo Operations Division or his designee, may offer settlements to persons charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(c) Unless otherwise provided by this subchapter, the terms and conditions of a settlement agreement between the Commission and a person charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules will be based on the Standard Administrative Penalty Chart incorporated into this section.
Figure: 16 TAC §402.706(c)

(d) The following words and terms, when used in this section and §402.707, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Enabling Act--Occupations Code, Chapter 2001.

(2) Charitable Bingo Administrative Rules--Texas Administrative Code, Title 16, Part 9, Chapter 402.

(3) Licensee--a person issued a license under Occupations Code 2001, or a Unit.

(4) Organization--a licensee, an applicant for a license, or a person required to obtain a bingo license.

(5) Respondent--a person responsible for answering a charge of violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(e) The Commission shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Commission welcomes any recommendation of an administrative law judge as to the appropriate sanctions imposed, but the Commission is not necessarily bound by such recommendations. A determination of the appropriate sanction is reserved to the Commission consistent with the Bingo Enabling Act.

(f) Additional remedies may be imposed along with or in lieu of an administrative penalty which may include: a redeposit of funds to the bingo account; a removal of funds from the bingo account; a disbursement of net proceeds in order to comply with the minimum 35% charitable distribution requirement; suspension, revocation or denial of a license; or denial or removal from the registry of approved workers.

(g) A settlement agreed to under this section shall be in the form of a written Memorandum of Agreement and Consent Order prepared by the Commission that must be signed by both parties. A Memorandum of Agreement and Consent Order shall contain findings of fact and conclusions of law. The conditions of the settlement, including the payment of an administrative penalty shall be completed within the time frame provided for in the settlement. Failure to comply with the conditions of the settlement may subject the respondent to further administrative action.

(h) The list of statutory violations in the Standard Administrative Penalty Chart is not an exclusive list of violations of the Bingo Enabling Act or the Charitable Bingo Administrative Rules. If a person is charged with a repeat violation within 36 months (3 years) of the first violation, then the penalty for a repeat violation will be imposed according to the Standard Administrative Penalty Chart for repeat violations.

(i) The amount of a penalty or the degree to which a remedy is applied will be determined by considering the following factors, as applicable:

(1) seriousness of the violation which includes the nature, circumstances, extent and gravity of the prohibited acts;

(2) history of previous violations which includes:

(A) the number of previous violations; and

(B) the number of repeated violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation after awareness of the violation through personal knowledge or notification by the commission;

(5) any other matter that justice may require, including:

(A) whether the violation was intentional, inadvertent, simple negligence, gross negligence, or the unavoidable result of a related violation;

(B) cooperation with the Commission during its examination, audit, or investigation of the person;

(C) length of time the licensee has held a license;

(D) risk to the public or state;

(E) whether the organization or person has acknowledged a violation and agreed to comply with the terms and conditions of remedial action through an agreed settlement with the Commission; and

(F) the cost of the investigation, examination or audit associated with the violation.

(j) If the Director or the Director's designee and the authorized representative for the respondent agree, the two parties may utilize §402.707, Expedited Administrative Penalty Guideline as alternative guidance related to this section.

§402.707. Expedited Administrative Penalty Guideline.

(a) The purpose of this subchapter is to provide an alternative disciplinary procedure for certain violations of the Bingo Enabling Act and the Charitable Bingo Administrative Rules in which the Director of the Charitable Bingo Operations Division seeks to facilitate expeditious resolution of cases and encourage settlements.

(b) The scope of this guideline will be limited to violations of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules that are identified by the Director or his designee and may be based on the Expedited Violations List incorporated into this section.

(c) Upon completion of an examination, inspection, audit, or investigation, and after which both parties have agreed that a violation of the Bingo Enabling Act or the Charitable Bingo Administrative Rules can be resolved expediently, the Director or his designee may cause a Notice of Administrative Violation and Settlement Agreement (NAVSA) to be issued to an authorized representative for the respondent.

(d) The NAVSA shall include the following information:

(1) date of the notice;

(2) names and addresses of both parties;

(3) a brief summary of the alleged violation;

(4) the dollar amount of the administrative penalty recommended by the Director or his designee;

(5) a brief explanation of the additional conditions required to comply with the violation;

(6) notice that an investigation, including an examination or audit, was conducted which alleges a violation was committed;

(7) a statement signed by an authorized representative for the respondent indicating the respondent agrees to the terms of the settlement being offered;

(8) notice that if the person does not accept the settlement offered, they may request a hearing on the occurrence of the violation, the amount of the penalty or both; and

(9) notice that if the person does not accept the settlement offered or request a hearing, the Commission may seek the maximum penalty authorized for the violation under the Bingo Enabling Act and the Charitable Bingo Administrative Rules, which may include revocation, suspension or denial of the person's license or worker registration, or application for a license or worker registration as applicable.

(e) The respondent shall have 20 days from the date the respondent receives the NAVSA to accept the recommendation of the Director, including the recommended administrative penalty; or make a written request for a hearing on the determination. If notification of acceptance or the written request for a hearing is not made within 20 days, the Director shall cause a hearing to be set and give notice of the hearing to the respondent. The opportunity for an agreement in accordance with this section will expire.

(f) After the NAVSA is accepted and returned to the Commission, the NAVSA will be forwarded to the Director for final approval and a copy will be forwarded to the respondent along with the Order. The respondent will have 60 days from the date of the Order to pay the recommended administrative penalty. Failure to comply with the terms of this Agreement may result in the imposition of a more severe degree of penalty which may include the revocation, suspension, denial of the license or worker registration, or removal from the worker registry as applicable.

(g) The list of statutory violations in the Expedited Violations List is not an exclusive list of violations that may be expedited. If a person is charged with a repeat violation that may be expedited within 36 months (3 years) of the first violation, then the penalty for a repeat violation will be imposed according to the Expedited Violations List for repeat violations.

Figure: 16 TAC §402.707(g)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2005.

TRD-200504990
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.6

The Texas State Board of Dental Examiners (Board) proposes new §101.6, relating to the issuance of emergency provisional licenses to dentists currently licensed in Louisiana or Mississippi who have been displaced by Hurricane Katrina and require a license to provide dental services in Texas.

The Board previous adopted an emergency rule designated as §101.6, pursuant to Texas Government Code §2001.034, and the September 1, 2005 proclamation by Governor Perry certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for people in Texas.

The Board finds that a large number of dentists currently licensed in Louisiana or Mississippi have been forced to evacuate their homes and practices in those states, and are now in the State of Texas, where they must possess a license to practice their profession, either on an emergency basis to aid evacuees, or to continue to provide for themselves and their families.

The Board currently has no applicable rule allowing for a provisional license. The statutory authority to grant such licensure is currently limited to Occupations Code §256.1013, which allows for a provisional license to be granted to an applicant for licensure by credentials.

This rule allows the Board to issue an emergency provisional license to a dentist licensed in good standing in Louisiana or Mississippi, who holds appropriate credentials, and who submits a complete application package to the Board.

The section specifies that it shall become effective after fulfillment of all Texas Register requirements and upon the expiration of the emergency rule, §101.6, entitled "Emergency Provisional Licensure for Dentists Displaced by Hurricane Katrina," which became effective September 12, 2005. It further specifies that the provisions of the section shall expire on August 1, 2006.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Dr. Zukowski has also determined that for the first five-year period the section is in effect the enforcement and administration of the section will benefit the public by allowing evacuees of this disaster to assist in the provision of emergency care to other evacuees, and to temporarily seek employment in their profession in the State of Texas.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section, other than a minimal application fee to the applicant.

Comments on the proposal may be submitted to Dr. Jim Zukowski, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The new section is proposed under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provide the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§101.6. Emergency Provisional Licensure for Dentists Displaced by Hurricane Katrina.

(a) The State Board of Dental Examiners hereby finds that Hurricane Katrina has created an emergency disaster and emergency conditions for people in Texas, constituting an imminent peril to the public health, safety, and welfare, as set out in the proclamation of the governor dated September 1, 2005. Accordingly, the Board promulgates this rule for the emergency provisional licensure of dentists. This section shall become effective after fulfillment of all Texas Register requirements and upon the expiration of the emergency rule, §101.6, entitled "Emergency Provisional Licensure for Dentists Displaced by Hurricane Katrina," which became effective September 12, 2005.

(b) Qualifying requirements. An individual may qualify for an emergency provisional license if the individual:

(1) Is a graduate of a CODA-accredited school of dentistry in the United States, Canada, or Puerto Rico;

(2) Is currently licensed in good standing in Louisiana and/or Mississippi as a dentist, with no history of disciplinary action against any license ever held in any jurisdiction;

(3) Has, as a result of Hurricane Katrina, lost the ability to continue to practice in Louisiana or Mississippi; and,

(4) Submits a complete application and applicable fees to the SBDE.

(c) Application requirements.

(1) In order to be considered for approval, an application for an emergency provisional license under this section must contain the following items:

(A) A complete, signed, and notarized Application for Emergency Provisional License;

(B) Application fee of $50, payable by check or money order made payable to the State Board of Dental Examiners;

(C) Copy of official birth certificate, passport, or naturalization papers, if available;

(D) Proof of graduation from an accredited school of dentistry, if available;

(E) Proof of successful completion of National Board examinations, Parts I & II, if available;

(F) Proof of successful completion of a clinical examination, if available; and,

(G) Verification of licensure for each state in which licensure has been issued. Copies of licenses are acceptable, if available.

(2) If any of these documents are not available, the SBDE, in its sole discretion, will use other methods to verify the information on the application.

(3) The SBDE will conduct a criminal background check in addition to verifying professional education and licensure.

(4) An emergency provisional license may be immediately suspended or revoked upon discovery of any falsification, omission, or withholding of information.

(5) Applications must be delivered to the office of the State Board of Dental Examiners.

(6) An application for emergency provisional licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant within three working days with an explanation of additional documentation or information needed.

(d) Duration and expiration.

(1) Emergency provisional license applications must be received on or before January 1, 2006.

(2) An applicant may not begin to engage in any acts defined as the practice of dentistry until the emergency provisional license has been issued by the Board.

(3) All emergency provisional licenses shall expire on January 31, 2006, unless renewed.

(4) An individual holding an emergency provisional license may apply for a one-time renewal of the license, to extend it through July 31, 2006.

(5) Approximately 30 days prior to the January 31, 2006, a license renewal notice will be mailed to all emergency provisional licensees.

(6) An individual wishing to practice beyond the expiration of an emergency provisional license must apply for and obtain a Texas dental license by either examination or credentials.

(e) A copy of the Texas Dental Practice Act and SBDE rules shall be provided to each applicant receiving an emergency provisional license.

(f) Practice under emergency provisional license.

(1) Emergency provisional license certificates must be displayed in accordance with §108.11 of this title.

(2) An emergency provisional licensee must obtain a signed, written consent from each patient prior to treatment that informs the patient that the licensee is providing services under the authority of a provisional license, and that all such licenses will expire no later than July 31, 2006.

(g) The provisions of this section shall expire on August 1, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505087
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 475-0972

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22 TAC §101.7

The Texas State Board of Dental Examiners (Board) proposes new §101.7, concerning retired status for licenses. The amendments are proposed to enact certain requirements imposed by Senate Bill 610, §3, 79th Legislature, as well as to define in rule form the process for placing a license on retired status. The section also relocates language from §108.10, which discusses the reinstatement of retired a license.

Subsection (a) of the proposed rule discusses the application process.

Subsection (b) relocates, restructures, and makes minor corrections to the language of §108.10.

Subsection (c) discusses a dentist's ability to practice in volunteer charity care with a license in retired status, as provided for by Senate Bill 610. It defines the prerequisites and limitations for providing services under the subsection.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Dr. Zukowski has also determined that for the first five-year period the section is in effect the administration and enforcement of the proposed section is expected to benefit the public by allowing experienced dentists to provide free dental services to indigent and critical need populations.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Dr. Jim Zukowski, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The new section is proposed under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§101.7. Retired License Status.

(a) Application

(1) A holder of a valid and current Texas dental license may apply to the board to have the license placed on retired status.

(2) A licensee must apply to the board for retired status, on a form prescribed by the board, before the expiration date of the person's Texas license.

(3) The board shall deny a request to place a license on retired status if there are any current or pending complaints or disciplinary actions against the license holder.

(b) Reinstatement. The board may reinstate a retired Texas dental license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) A license holder who, at the time of application for reinstatement, is practicing dentistry in another state, or territory outside of the United States, or had practiced dentistry actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence examination;

(D) proof of current basic CPR certification; and

(E) proof of completion of twelve hours of continuing education, pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application.

(2) A license holder who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where licensee has held a license;

(B) proof that licensee has taken and passed the Texas jurisprudence examination;

(C) proof of current basic CPR certification; and

(D) proof of completion of twelve hours of continuing education, pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application, of which a minimum of twelve hours must be clinical (hands-on).

(3) A license holder who applies to reenter active practice must comply with all other applicable provisions of the Dental Practice Act and board rules.

(4) A license holder who applies to reenter active practice must have been in compliance or satisfied all conditions of any board order that may have been in effect at the time retired status was granted.

(5) The board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reenter active practice.

(c) Practice in volunteer charity care.

(1) A dentist holding a retired status Texas dental license under this section may practice dentistry if the practice consists solely of volunteer charity care.

(A) For the purposes of this subsection, "volunteer charity care" is defined as the direct provision of dental services to indigent or critical need populations within the state of Texas, without compensation.

(B) A dentist providing services under this subsection may not receive any remuneration for such services.

(C) A dentist may not, without approval from board staff, provide services under this subsection if he or she was subject to disciplinary action in any jurisdiction in the three years immediately preceding the license's entry into retired status.

(2) Application process. A dentist must make written request to the board, on a form prescribed by the board, prior to offering services under this subsection.

(A) The report shall include a sworn affirmation by the dentist that the dentist meets the qualifications of this subsection.

(B) Upon approval by board staff, a letter of authorization shall be issued to the dentist.

(i) The letter of authorization, unless revoked by the board, shall expire at the end of the calendar year in which it was issued.

(ii) Provision of dental services after the expiration of the letter of authorization shall constitute the practice of dentistry without a license.

(iii) It shall be the responsibility of the dentist to maintain current authorization to provide services under this subsection, by making proper request as required by this subsection.

(3) Scope of practice.

(A) A dentist providing services under this subsection may not prescribe or administer controlled substances under Drug Enforcement Administration (DEA) Schedules I or II.

(B) A dentist providing services under this subsection must post, or be able to produce on demand of a patient, a current letter of authorization from the board.

(4) A dentist practicing under this subsection must complete six hours of the annual continuing education requirement for licensees under Chapter 104 of this title.

(5) A dentist providing services under this subsection shall execute a written agreement with the facility where services are offered to retain right of access to all dental records resulting from the provision of such services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505089
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 475-0972

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.6

The Texas State Board of Dental Examiners (Board) proposes new §103.6, relating to the issuance of emergency provisional licenses to dental hygienists currently licensed in Louisiana or Mississippi who have been displaced by Hurricane Katrina and require a license to provide dental services in Texas.

The Board previous adopted an emergency rule designated as §103.6, pursuant to Texas Government Code §2001.034, and the September 1, 2005 proclamation by Governor Perry certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for people in Texas.

The Board finds that a large number of dental hygienists currently licensed in Louisiana or Mississippi have been forced to evacuate their homes and practices in those states, and are now in the State of Texas, where they must possess a license to practice their profession, either on an emergency basis to aid evacuees, or to continue to provide for themselves and their families.

The Board currently has no applicable rule allowing for a provisional license. The statutory authority to grant such licensure is currently limited to Occupations Code §256.1013, which allows for a provisional license to be granted to an applicant for licensure by credentials.

This rule allows the Board to issue an emergency provisional license to a dental hygienists licensed in good standing in Louisiana or Mississippi, who holds appropriate credentials, and who submits a complete application package to the Board.

The section specifies that it shall become effective after fulfillment of all Texas Register requirements and upon the expiration of the emergency rule, §103.6, entitled "Emergency Provisional Licensure for Dental Hygienists Displaced by Hurricane Katrina," which became effective September 12, 2005. It further specifies that the provisions of the section shall expire on August 1, 2006.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Dr. Zukowski has also determined that for the first five-year period the section is in effect the enforcement and administration of the section will benefit the public by allowing evacuees of this disaster to assist in the provision of emergency care to other evacuees, and to temporarily seek employment in their profession in the State of Texas.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section, other than a minimal application fee to the applicant.

Comments on the proposal may be submitted to Dr. Jim Zukowski, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The new section is proposed under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provide the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§103.6. Emergency Provisional Licensure for Dental Hygienists Displaced by Hurricane Katrina.

(a) The State Board of Dental Examiners hereby finds that Hurricane Katrina has created an emergency disaster and emergency conditions for people in Texas, constituting an imminent peril to the public health, safety, and welfare, as set out in the proclamation of the governor dated September 1, 2005. Accordingly, the Board promulgates this rule for the emergency provisional licensure of dental hygienists. This section shall become effective after fulfillment of all Texas Register requirements and upon the expiration of the emergency rule, §103.6, entitled "Emergency Provisional Licensure for Dental Hygienists Displaced by Hurricane Katrina," which became effective September 12, 2005.

(b) Qualifying requirements. An individual may qualify for an emergency provisional license if the individual:

(1) Is a graduate of a CODA-accredited school of dental hygiene in the United States, Canada, or Puerto Rico;

(2) Is currently licensed in good standing in Louisiana and/or Mississippi as a dental hygienist, with no history of disciplinary action against any license ever held in any jurisdiction;

(3) Has, as a result of Hurricane Katrina, lost the ability to continue to practice in Louisiana or Mississippi; and,

(4) Submits a complete application and applicable fees to the SBDE.

(c) Application requirements.

(1) In order to be considered for approval, an application for an emergency provisional license under this section must contain the following items:

(A) A complete, signed, and notarized Application for Emergency Provisional License;

(B) Application fee of $25, payable by check or money order made payable to the State Board of Dental Examiners;

(C) Copy of official birth certificate, passport, or naturalization papers, if available;

(D) Proof of graduation from an accredited school of dental hygiene, if available;

(E) Proof of successful completion of National Board examinations, if available;

(F) Proof of successful completion of a clinical examination, if available; and,

(G) Verification of licensure for each state in which licensure has been issued. Copies of licenses are acceptable, if available.

(2) If any of these documents are not available, the SBDE, in its sole discretion, will use other methods to verify the information on the application.

(3) The SBDE will conduct a criminal background check in addition to verifying professional education and licensure.

(4) An emergency provisional license may be immediately suspended or revoked upon discovery of any falsification, omission, or withholding of information.

(5) Applications must be delivered to the office of the State Board of Dental Examiners.

(6) An application for emergency provisional licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant within three working days with an explanation of additional documentation or information needed.

(d) Duration and expiration.

(1) Emergency provisional license applications must be received on or before January 1, 2006.

(2) An applicant may not begin to engage in any acts defined as the practice of dental hygiene until the emergency provisional license has been issued by the Board.

(3) All emergency provisional licenses shall expire on January 31, 2006, unless renewed.

(4) An individual holding an emergency provisional license may apply for a one-time renewal of the license, to extend it through July 31, 2006.

(5) Approximately 30 days prior to the January 31, 2006, a license renewal notice will be mailed to all emergency provisional licensees.

(6) An individual wishing to practice beyond the expiration of an emergency provisional license must apply for and obtain a Texas dental hygienist's license by either examination or credentials.

(e) A copy of the Texas Dental Practice Act and SBDE rules shall be provided to each applicant receiving an emergency provisional license.

(f) Practice under emergency provisional license.

(1) Emergency provisional license certificates must be displayed in accordance with §108.11 of this title.

(2) An emergency provisional licensee must obtain a signed, written consent from each patient prior to treatment that informs the patient that the licensee is providing services under the authority of a provisional license, and that all such licenses will expire no later than July 31, 2006.

(g) The provisions of this section shall expire on August 1, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505088
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0972

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22 TAC §103.7

The Texas State Board of Dental Examiners (Board) proposes new §103.7, concerning retired status for dental hygiene licenses. The amendments are proposed to define in rule form the process for placing a license on retired status. The section also relocates language from §108.10, which discusses the reinstatement of retired a license.

Subsection (a) of the proposed rule discusses the application process.

Subsection (b) relocates, restructures, and makes minor corrections to the language of §108.10.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Dr. Zukowski has also determined that for the first five-year period the section is in effect there is no anticipated public benefit as a result of enforcing or administering this section.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Dr. Jim Zukowski, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The new section is proposed under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§103.7. Retired License Status.

(a) Application

(1) A holder of a valid and current Texas dental hygiene license may apply to the board to have the license placed on retired status.

(2) A licensee must apply to the board for retired status, on a form prescribed by the board, before the expiration date of the person's Texas license.

(3) The board shall deny a request to place a license on retired status if there are any current or pending complaints or disciplinary actions against the license holder.

(b) Reinstatement. The board may reinstate a retired Texas dental hygiene license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) A license holder who, at the time of application for reinstatement, is practicing dental hygiene in another state, or territory outside of the United States, or had practiced dental hygiene actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence examination;

(D) proof of current basic CPR certification; and

(E) proof of completion of twelve hours of continuing education, pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application.

(2) A license holder who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where licensee has held a license;

(B) proof that licensee has taken and passed the Texas jurisprudence examination;

(C) proof of current basic CPR certification; and

(D) proof of completion of twelve hours of continuing education, pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application, of which a minimum of twelve hours must be clinical (hands-on).

(3) A license holder who applies to reenter active practice must comply with all other applicable provisions of the Dental Practice Act and board rules.

(4) A license holder who applies to reenter active practice must have been in compliance or satisfied all conditions of any board order that may have been in effect at the time retired status was granted.

(5) The board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reenter active practice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
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CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.2

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 104, §104.2, concerning continuing education providers. The amendments are proposed to add three providers previously approved by the board to the list:

the Dental Laboratory Association of Texas; the Dental Assisting National Board; and the American Dental Assistants Association and its constituent organizations.

There are no other substantive changes to the section.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the amended section.

There is no anticipated public benefit as a result of enforcing or administering this amended section.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the amended section.

Comments on the proposal may be submitted to Dr. Jim Zukowski, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendments are proposed under Texas Government Code, §§2001.021, et seq., and Texas Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendments affect Title 3, Subtitle D of the Texas Occupations Code and Texas Administrative Code, Title 22, Part 5, Chapter 101 - 125.

§104.2. Providers.

Continuing Education courses endorsed by the following providers will meet the criteria for acceptable continuing education hours if such hours are either technical or scientific as related to clinical care and in content as certified by the following providers:

(1) - (15) (No change.)

(16) Texas Dental Hygiene Educator's Association;

(17) Dental Laboratory Association of Texas;

(18) Dental Assisting National Board;

(19) American Dental Assistants Association and its constituent organizations; and,

(20) [~~(17)~~] Other providers as approved by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505111
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 475-0972

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CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.10

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Dental Examiners (Board) proposes the repeal of §108.10 of Chapter 108, 22 TAC, concerning the reinstatement of retired licenses.

The proposed repeal would be attendant to the relocation of the language of this section to the concurrently proposed new §101.7, and new §103.7, which address retired status licenses for dentists and dental hygienists, respectively.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that there will be no fiscal implications for local or state government, anticipated economic cost to persons, anticipated local employment impact, public benefit, fiscal implications for small or large businesses, or adverse economic impacts on small or large businesses as a result of the repeal.

Comments on the proposal may be submitted to Dr. Jim Zukowski, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The repeal is proposed under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed repeal affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§108.10. Reinstatement of Retired License.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505093
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 475-0972

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §135.3

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §135.3 concerning ambulatory surgical centers license fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Ambulatory Surgical Centers Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

SECTION-BY-SECTION SUMMARY

Amendments to §135.3 contain increases in fees assessed against licensed ambulatory surgical centers for initial and renewal applications. Specifically, §135.3(a) increases the fee for an initial license application by $1,200; and §135.3(b) increases the fee for a renewal license application by $1,200.

FISCAL NOTE

Cindy Bednar, Manager, Facility Licensing Group, Regulatory Licensing Unit, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of $112,800 in 2006 and $186,000 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed section would have fiscal implications for local government only if the local government owned or operated a licensed ambulatory surgical center.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bednar has also determined that there will be an adverse economic effect on both micro-businesses and small businesses that operate licensed ambulatory surgical centers related to the increase in licensing fees. It is assumed that a large percentage of ambulatory surgical centers will meet the definition of a micro-business or a small business. These facilities will experience an adverse economic impact of $1200 for a 2-year licensing period. There will be an increase in the licensing fees for those businesses or persons required to maintain an ambulatory surgical center license. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bednar has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding sufficient for continued operation of the program to ensure that ambulatory surgical centers are licensed and maintain compliance with minimum licensing standards.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the pubic health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Nance Stearman, Health Care Quality Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Mail Code CEN, Austin, Texas 78756, (512) 834-6752 or by email to Nance.Stearman@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agency's authority to adopt.

STATUTORY AUTHORITY

The proposed amendment to §135.3 is authorized by Health and Safety Code, §§12.0111 and 243.007, which require the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 12, 243, and 1001; and Government Code, Chapter 531.

§135.3. Fees.

(a) Initial license fee. The fee for an initial license (includes change of ownership or relocation) is $5,200 [~~$4,000~~]. The license term is two years.

(b) Renewal license fee. The fee for a renewal license is $5,200. The license term is two years.

~~[(1) The fee for renewal licenses issued through December 31, 2005, will be either $2000 for a one-year license, or $4000 for a two-year license. The department will determine the license term and notify the ASC prior to the license renewal date.]~~

~~[(2) The fee for a renewal license issued January 1, 2006, and after will be $4,000. The license term will be two years.]~~

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2005.

TRD-200504986
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18

The Texas Department of Insurance proposes amendments to §7.18 concerning Statements of Statutory Accounting Principles (SSAP) that provide guidance to independent accountants, industry accountants, and the department's analysts and examiners as to how to properly record business transactions for the purpose of accurate statutory reporting. SSAP provide a nationwide standard method of accounting, which most insurers, including health maintenance organizations, are required to use for statutory financial reporting guidance. Although SSAP create a more consistent regulatory environment, they do not preempt individual state legislative or regulatory authority. SSAP are adopted by the National Association of Insurance Commissioners (NAIC) through its maintenance process, which involves preparation of the SSAP, exposure, comment, and adoption by the NAIC. The Accounting Practices and Procedures Manual (Manual) is a comprehensive guide to statutory accounting principles and includes the SSAP that have been adopted by the NAIC. The proposed amendments will adopt by reference the March 2005 version of the Manual with the exceptions noted in §7.18. The proposed amendments include new SSAP Nos. 90 and 93 which were adopted by the NAIC on June 13, 2005 and are effective January 1, 2006. SSAP No. 90 replaces SSAP No. 40, paragraphs 9, 10 and 19, and establishes statutory accounting principles for the impairment or disposal of real estate investments and the treatment of long-lived assets associated with discontinued operations including nonadmitted intangible assets other than goodwill, such as trade names (referred to collectively as long-lived assets). SSAP No. 93 replaces SSAP No. 48, paragraph 1, and establishes statutory accounting principles for investments in federal and certain state sponsored Low Income Housing Tax Credit properties. The proposal also includes new paragraph (7) in subsection (c) which provides additional guidance for certain requirements of Actuarial Guideline No. 38 to be reasonably consistent with the July 2005 adoption of Actuarial Guideline No. 38 by the Life Insurance and Annuties (A) Committee of the NAIC.

Ms. Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of this amendment, and there will be no effect on local employment or the local economy.

Ms. Patterson has also determined that for each year of the first five years the amended section is in effect, the public benefit will be the more efficient regulation of insurance and a decrease in costs to insurers that are currently required to file multiple financial statements in multiple states. The proposed adoption of the March 2005 Manual will provide for a more consistent regulatory environment and will become a single source for accounting guidance. The March 2005 Manual is available from the NAIC at a cost of $425 for a soft cover manual or $395 for a CD-ROM. The cost to comply with the provisions of the Manual will vary from insurer to insurer. Since the Manual was first adopted on January 1, 2001, most of the costs of programming and training have been incurred. Based upon the department's experience, each insurer will have to ensure that at least one employee familiar with the insurer's accounting practices is instructed in the provisions of the Manual and monitors changes in the Manual. This instruction can be accomplished through self-study, attendance at a seminar, or a combination of the two methods. The NAIC offers a self-study course at a cost of $175 per copy. Seminars that offer instruction on the Manual cost approximately $795 per attendee for a two-day course. The number of employees sent to training is largely dependent on the size and expertise of the insurer's accounting staff but is not dependent on the overall size of the insurer. As the size of the accounting staff increases, the likelihood increases that the insurer will choose to send more than one employee to a seminar for training. The department estimates that companies with five or fewer accounting employees will either require the use of self-study training or send one employee to a seminar. Those companies with six to ten employees on the accounting staff will likely send one to three employees to seminars for instruction and supplement that training with self-study materials. Those companies with eleven or more employees on the accounting staff will likely send three or more employees to seminars and supplement with self-study materials. Each employee is estimated to be compensated at a rate of $17 to $30 an hour. These estimates are based upon the department's discussions with industry representatives. Changes in the Manual may also require changes to an insurer's electronic accounting system. The cost of changes to accounting systems is dependent on the insurer's line of insurance, the complexity of the insurer's transactions, and whether the system is proprietary or created by third-party vendors. Costs due to system changes increase with the complexity of transactions and the percentage

of proprietary computer code in the system. In the department's experience, small companies do not usually rely upon internally created proprietary systems and do not generally enter complex transactions on a regular basis. Large companies are more likely to have an internally created proprietary system and enter into complex transactions. Accordingly, system change costs, when necessary, will be greater for large companies. Based on the cost of labor per hour, the department believes the cost of compliance with the proposal will be less for small and micro businesses than the largest businesses. The department finds it is neither legal nor feasible to waive or modify the requirements of this proposal for small and micro businesses because doing so could result in a disparate effect on enrollees, policyholders, and other persons affected by the proposal; however, farm mutual insurance companies, statewide mutual assessment companies, local mutual aid associations, and mutual burial associations with less than $5 million in annual direct premiums are exempted from compliance with the Manual because these companies are small and have traditionally accounted for their business on a cash basis. Regardless of the fiscal effect of compliance, the underlying statutes require the adoption of accounting standards to be used by regulated entities in completing financial statements filed with the department. The department believes the accounting standards of this proposal are similar in nature to the accounting requirements used in other states. The adoption of this proposal will subject regulated entities licensed in other states to uniform accounting requirements among the various states.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 19, 2005. All comments should be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Betty Patterson, Senior Associate Commissioner, Financial Program, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Texas Insurance Code Articles 1.15, 1.32, 3.33, 5.61, 21.28-A and 21.39, and §§32.041, 36.001, 802.001, 823.012, 841.004, 843.151, 861.255 and 862.001. Article 1.15 mandates that the department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Article 1.32, §3 authorizes the Commissioner to establish standards for evaluating the financial condition of an insurer. Article 3.33, §9 authorizes the Commissioner to adopt rules, minimum standards, or limitations as may be appropriate for the implementation of the article. Article 5.61(a) provides that reserves shall be computed in accordance with rules adopted by the Commissioner for the purpose of adequately protecting insureds. Article 21.28-A, §§1 and 11, authorizes the Commissioner to adopt rules necessary to remedy the financial condition and the management of certain insurers. Article 21.39 authorizes the Commissioner to adopt rules for establishing reserves applicable to each line of insurance recommended by the NAIC. Sections 32.041 and 802.001 authorize the Commissioner to provide required financial statement forms. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.151 authorizes the Commissioner to promulgate rules as are necessary to carry out the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Sections 841.004, 861.255 and 862.001(c) authorize the Commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines and labor saving devices, and the maximum period for which each such class may be amortized. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

The following provisions of the Texas Insurance Code are affected by this proposal: Articles 1.15 and 21.39, and §§32.041, 802.001, 841.004, 861.255 and 862.001.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(a) The purpose of this section is to adopt statutory accounting principles, which will provide independent accountants, industry accountants, and the department's analysts and examiners guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2005 [~~2004~~] version of the Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners (NAIC) will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The Commissioner reserves all authority and discretion to resolve any accounting issues in Texas. When making a determination on the proper accounting treatment for an insurance or health plan transaction, the Commissioner shall refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. Furthermore, §§3.1501 - 3.1505, 3.1605, 3.1606, 3.7004, 7.7, 7.85 and 11.803 of this title (relating to Annuity Mortality Tables, General Requirements, Required Opinions, Contract Reserves, Subordinated Indebtedness, Audited Financial Reports and Investments, Loans and Other Assets), preempt any contrary provisions in the Manual:

(1) Texas statutes;

(2) department rules;

(3) directives, instructions, and orders of the Commissioner;

(4) the Manual;

(5) other NAIC handbooks, manuals, and instructions, adopted by the department; and

(6) Generally Accepted Accounting Practices.

(b) The Commissioner adopts by reference the March 2005 [~~2004~~] version of the Manual, with the exceptions and additions set forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when examining financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. This adoption by reference shall be applied to examinations conducted as of January 1, 2006 [~~2005~~] and thereafter, and also shall be used to prepare all financial statements filed with the department for periods after January 1, 2006 [~~2005~~].

(c) The Commissioner adopts the following exceptions and additions to the Manual:

(1) In addition to the statements of statutory accounting principles in the Manual, Statement of Statutory Accounting Principles

(SSAP) No. 90 regarding accounting for the impairment or disposal of real estate investments and SSAP No. 93 regarding accounting for low income housing tax credit property investments adopted by the NAIC on June 13, 2005 and effective January 1, 2006, are adopted by reference and shall be used to prepare all financial statements filed with the department for periods after January 1, 2006. This adoption of SSAP Nos. 90 and 93 effectively replaces SSAP No. 40, paragraphs 9, 10 and 19 and SSAP No. 48, paragraph 1. [~~Statement of Statutory Accounting Principles (SSAP) No. 88 regarding valuation of subsidiary, controlled, and affiliated entities and SSAP No. 91 regarding accounting for transfers and servicing of financial assets including securitizations and various repurchase agreements adopted by the NAIC on September 12, 2004 and effective January 1, 2005, are adopted by reference and shall be used to prepare all financial statements filed with the department for periods after January 1, 2005. This adoption of SSAP Nos. 88 and 91 effectively replaces SSAP Nos. 18, 33, 45, 46, paragraphs 2 and 3 of SSAP No. 32, and paragraphs (4)- (6) of SSAP No. 68~~].

(2) Retrospective premiums must be billed within 60 days of computation and audit premiums must be billed within 60 days of the completion of the audit in determining the beginning date from which the 90 day period is calculated to determine admissibility of uncollected premium balances under SSAP No. 6.

(3) Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and shall be amortized as provided by the Manual. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.

(4) Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for such property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.

(5) Goodwill, as reported on a regulated entity's statutory financial statements as of December 31, 2000, and any additional goodwill acquired thereafter, beginning January 1, 2001, shall be admitted as an asset and accounted for as permitted by SSAP Nos. 61 and 68. All other amounts of goodwill, including, but not limited to, such amounts that may have been previously expensed, shall not be allowed as an admitted asset. However, notwithstanding the provisions of SSAP Nos. 61 and 68, all methods of non-insurer subsidiary and affiliate valuation permitted by Insurance Code §§823.301 - 823.307 may be used for the purposes of goodwill calculation.

(6) All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.

(7) Reserves for life insurance policies within the scope of Actuarial Guideline No. 38 (AG 38) shall be determined in accordance with subparagraphs (A) - (D) of this paragraph.

(A) Policies issued on or after July 1, 2005. The assumptions used in AG 38, item 8, steps 3 and 4 are allowed to be inconsistent only up to an assumed 7% premium load which may be used in item 8, step 4.

(B) Policies issued before July 1, 2005. An insurer must be able to demonstrate reserve adequacy based on an asset adequacy analysis.

(C) Assumptions. Assumptions used in AG 38, item 8, must be reasonable and consistent between steps 3 and 4 of item 8, except for the allowance provided in subparagraph (A) of this paragraph. Assumptions include any factor or value, whether assumed or known.

(D) Application. Assumptions and methods used in AG 38 must reasonably measure the actual level of prefunding to establish reserves required by Insurance Code Article 3.28, Subchapter EE of this title (relating to Valuation of Life Policies), AG38 and this subparagraph.

(d) A farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association that has less than $5 million in annual direct written premiums need not comply with the Manual.

(e) In the event a domestic insurer desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer shall file a written request for a permitted accounting practice. Such filing shall be made with the Associate Chief Examiner, Texas Department of Insurance, Mail Code 305-2E, P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement affected by the deviated accounting practice. Insurers shall not use deviated accounting practice without the department's prior approval.

(f) This section shall not be construed to either broaden or restrict the authority provided under the Insurance Code to insurers, including health maintenance organizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505073
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-6327

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28 TAC §7.85

The Texas Department of Insurance proposes amendments to §7.85 concerning audited financial reports. The amendments are necessary to add to the definition of "Generally Accepted Auditing Standards" to implement Senate Bill 1591 enacted by Acts 2005, 79th Legislature, ch. 408, eff. Sept. 1, 2005 which added to Insurance Code Article 1.15A, the auditing standards adopted by the Public Company Accounting Oversight Board; revise subsection (e) of the section to implement the amendment to Article 1.15A by Senate Bill 1591 to require that the accountant conducting the audit consider the standards specified in the subsection; clarify the accounting and valuation requirements for certain investments by adding a reference to §7.18 of this title (relating to National Association of Insurance Commissioners Practices and Procedures Manual) in subsections (e) and (g) of the section; and add a balance sheet in subsection (f) of the section to assist in the reconciliation of any differences between the audited financial report and the department's reporting re-

quirements. The amendments are also necessary to update references to statutes and correct grammatical errors.

Ms. Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of the amendments, and there will be no effect on local employment or the local economy.

Ms. Patterson has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be more efficient regulation of insurers subject to examination under Insurance Code Article 1.15 because of the utilization of the required report and workpapers by the department in conducting examinations of insurers. There is no financial cost to persons required to comply as a result of the adoption, enforcement or administration of the proposed amendments as these amendments are the result of the enactment of the amendments to the Insurance Code Article 1.15A by the 79th Texas Legislature and the department's proposed amendments to §7.18 of this title (relating to National Association of Insurance Commissioners Accounting Practices and Procedures Manual) published elsewhere in this issue of the *Texas Register*. Because these amendments are not a result of the adoption, enforcement or administration of the proposed amendments, it is the department's position that the adoption of the amendments will have no adverse economic effect on small and micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 19, 2005. All comments should be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Betty Patterson, Senior Associate Commissioner, Financial Program, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Texas Insurance Code Article 1.15A and §36.001. Article 1.15A, §10(f) requires the Commissioner to adopt rules governing the information to be included in the audited financial report prepared by an accountant or accounting firm, which is reviewed by the department during the conduct of the examination of insurers under Article 1.15. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

Insurance Code Article 1.15A is affected by this proposal.

§7.85. Audited Financial Reports.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accountant--An independent certified public accountant or accounting firm that meets the requirements of Insurance Code, Article 1.15A, §12.

(2) Audited Financial Report--The annual audit report required by Insurance Code, Article 1.15A.

(3) Commissioner--The Commissioner of Insurance.

(4) Department--The Texas Department of Insurance.

(5) Examiner--Staff appointed by the Commissioner pursuant to Insurance Code, Articles 1.17 and 1.18.

(6) Generally Accepted Accounting Principles (GAAP)--The conventions, rules, and procedures that define accepted accounting practice, including broad guidelines and detailed procedures, set forth by the Accounting Principles Board of the American Institute of Certified Public Accountants, which was superseded by the Financial Accounting Standards Board, and which principles are specifically defined by SAS Number 69 (AU §411.05).

(7) Generally Accepted Auditing Standards (GAAS)--The standards adopted by the American Institute of Certified Public Accountants or Public Company Accounting Oversight Board to conduct an audit and to ensure the quality of the performance by accountants who are engaged in an audit of financial statements.

(8) NAIC--The National Association of Insurance Commissioners.

(9) Statutory Examination--An examination performed by the Department's examiners or other persons or firms retained by the Department specifically for examination of insurers, corporations, or associations.

(10) Work Papers--The records kept by the accountant supporting that accountant's audit opinion, including the audit records defined by Insurance Code, Article 1.15A, §17(a); the accountant's audit planning records; and any record of communications related to the audit between the accountant and the insurer pursuant to the Insurance Code, Article 1.15A, §17(b).

(11) Material--As defined in the NAIC Accounting Practices and Procedures Manual adopted in §7.18 of this title (relating to NAIC Accounting Practices and Procedures Manual).

(b) Priority of Accounting Guidance. The priority for determination of accounting standards is set out in §7.18 of this title.

(c) Applicability. This section applies only to audited financial reports with audit dates as of December 31, 1995, or later. A foreign or alien insurer may be exempt from this rule if the foreign or alien insurer files an audited financial report in another state and the requirements for that state's audited financial reports are determined by the Commissioner pursuant to the Insurance Code, Article 1.15A, §6(a), to be substantially similar to the requirements in Insurance Code, Article 1.15A. A foreign or alien insurer is exempt from this rule if the foreign or alien insurer files an audited financial report in another state and the requirements for that state's audited financial reports have already been determined by the Commissioner pursuant to the Insurance Code, Article 1.15A, §6(a), to be substantially similar to the requirements in Insurance Code, Article 1.15A.

(d) Purpose. The Department recognizes that the Insurance Code, Article 1.15A, requires audited financial reports to be prepared, and that statutory examinations are periodically conducted pursuant to the Insurance Code. To improve coordination between the audited financial reports and statutory examinations, and to promote the utilization of work papers to the fullest extent during the conduct of statutory examinations, certain minimum standards, guidelines, and procedures must be incorporated by the accountant during the preparation of the work papers and the audited financial report. The purpose of this section is to establish those requirements.

(e) Conduct of audit. The annual audit required by the Insurance Code, Article 1.15A, shall be conducted in accordance with GAAS. It is not the department's intent to expand audit testing beyond the requirements of GAAS. The accountant conducting the audit shall consider [~~To the extent not inconsistent with GAAS, consideration shall~~

~~be given to~~] the procedures and conventions set out in paragraphs (1) - (4) of this subsection, as follows:

(1) audit procedures and format contained in the NAIC Examiners Handbook;

(2) accounting treatments for the particular line(s) of insurance contained in §7.18 of this title and the NAIC Annual Statement Instructions adopted by the Commissioner;

(3) valuation procedures contained in the NAIC Purposes and Procedures of the Securities Valuation Office manual and §7.18 of this title; and

(4) any order(s) of the Commissioner issued to a particular company.

(f) Contents of audited financial reports. In addition to the contents specified in the Insurance Code, Article 1.15A, §10(a) - (c), audited financial reports shall contain the statements and reports set out in paragraphs (1) - (3) of this subsection.

(1) Audit [~~audit~~] procedures and format contained in the NAIC Examiners Handbook. [~~;~~]

(2) The balance sheet, statement of gain or loss from operations, statement of changes in capital and surplus, and the statement of cash flow prepared in accordance with the Texas Administrative Code and the NAIC Annual Statement Instructions adopted by the Commissioner.

(3) In addition to the items that must be recorded in the notes to the financial statements as required by the Insurance Code, Article 1.15A, §10(c), any exceptions to compliance with the financial, investment, and holding company provisions of the Insurance Code or the Texas Administrative Code noted during the audit and a schedule and explanation of material non-admitted assets shall also be recorded in notes. The notes shall also include those items required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. Furthermore, the notes shall include a reconciliation of any differences, if any, between the audited statutory financial statements and the Annual Statement filed with the department, with written description of the nature of these differences.

(g) Contents of work papers.

(1) For those items subjected to detailed tests by the accountant during the course of the audit, the work papers shall contain notation of whether any material exceptions exist for each of the items set out in subparagraphs (A) and (B) of this paragraph.

(A) For invested assets:

(i) compliance as an authorized investment has been determined and does not exceed statutory limitations;

(ii) ownership and possession have been verified; and

(iii) securities are valued in accordance with the instructions of the NAIC Purposes and Procedures of the Securities Valuation Office manual and §7.18 of this title.

(B) For assets other than invested assets:

(i) such assets are admitted in accordance with the appropriate provision of the Insurance Code or Texas Administrative Code; and

(ii) such assets are valued in accordance with the Texas Administrative Code and §7.18 of this title.

(2) If the regulated entity subject to the audit has any material reinsurance agreement or agreements, the work papers shall contain an outline addressing the items set out in subparagraphs (A) - (E) of this paragraph as follows:

(A) summary of the insurer's overall reinsurance program;

(B) explanation of relevant provisions by which liabilities are transferred to the reinsurer and any contingency provisions by which the reinsurer can cause the ceding insurer to reassume liabilities previously transferred to the reinsurer;

(C) explanation about assets held in trust, depositories, or letters of credit by which any reserve liabilities are collateralized;

(D) verification of any material reinsurance balance ceded or assumed; and

(E) explanation of amounts recoverable from unlicensed reinsurers that are not collateralized, or disputed reinsurance recoverables.

(3) The work papers of any audited entity shall contain:

(A) any letters from the accountant to management commenting on or explaining internal management operating procedures;

(B) computer-generated work papers;

(C) audit program;

(D) reports prepared by outside consultants;

(E) for policy liabilities, a note that reserves are established in accordance with policy and statutory provisions, and that required payments were made pursuant to any contract provisions;

(F) for all other liabilities, that all material liabilities of the company have been properly recorded; and

(G) internal control work papers.

(4) The work papers of any audited entity shall contain a notation that the accountant has determined that such entity met the requirements of subparagraphs (A) and (B) of this paragraph.

(A) Filing requirements have been met of the Insurance Code, Chapter 823 [~~Article 21.49-1, §3 and §4,~~] and the Texas Administrative Code, including but not limited to the requirements that all dividends have been reported to the Department within two business days after declaration and at least ten days prior to payment, and that all dividends have been declared to have been paid in accordance with the provisions of Insurance Code, Articles 3.11, 21.31, 21.32, 21.32A, or §884.253 [~~22.08~~], whichever statute is applicable.

(B) Unencumbered assets have been maintained in an amount at least equal to reserve liabilities as required by Insurance Code, Article 21.39-A.

(h) Accessibility of work papers. The accountant shall provide all work papers to the examiner, whether during or after the preparation of the audited financial report. The examiner may obtain, if necessary, photocopies of work papers as provided by the Insurance Code, Article 1.15A, §17(c), so as not to burden the accountant if a statutory examination is occurring at the same time as an annual audit. Information obtained under this section is subject to the confidentiality standards imposed by Insurance Code, Articles 1.15, §8(b); 1.15A, §17(c); 1.18; and §823.011 [~~21.49-1, §10~~].

(i) Noncompliance with this section may result in the Commissioner initiating action pursuant to Insurance Code Article [~~, Articles 1.10, §7, and~~] 1.15A, §12(d) and Chapter 82.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505072
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

SUBCHAPTER D. HEALTH GROUP COOPERATIVES

28 TAC §§26.401 - 26.405, 26.407 - 26.411

The Texas Department of Insurance proposes amendments to Subchapter D, §§26.401 - 26.405, and 26.407 - 26.411 concerning the establishment of, and provision of health benefit plan coverage to, health group cooperatives pursuant to Insurance Code, Title 8, Chapter 1501. The proposed amendments implement Senate Bill (SB) 805, 79th Legislature, Regular Session, which revised the standards by which carriers provide group health benefit plan coverage to health group cooperatives comprised of small or large employers. SB 805 enacted §1501.0575, making participation by health benefit plan issuers in health group cooperatives generally voluntary. The bill also amended §1501.0581 to provide that a health group cooperative may be composed of small employers or large employers, but not both; and that a health group cooperative consisting only of small employers is not required to allow a small employer to join the cooperative under certain statutorily specified conditions and so long as the commissioner has been timely notified of the cooperative's election. The proposed amendments are necessary to address changes to requirements governing the formation and operation of health group cooperatives and the obligations of insurance companies and health maintenance organizations (HMOs) - hereinafter collectively "carriers" - that issue health benefit plan coverage for these entities.

The proposed amendments to §26.401 add subsection (e), which requires that organizational documents otherwise required to be filed under the section include notification about whether the health group cooperative elects to restrict membership to 50 eligible employees. The proposed amendments also make conforming changes to Insurance Code references based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

The proposed amendments to §26.402 make changes to provisions addressing authorized membership of a health group cooperative and add a new subsection (d) to conform the section to Insurance Code §1501.0581(a) - (c) and (o) - (p), as amended by SB 805.

The proposed amendment to §26.403 provides that a health group cooperative may offer other ancillary products and services, in accord with provisions of Insurance Code §1501.058, relating to powers and duties of cooperatives.

The proposed amendments to §26.404 provide that a health group cooperative is considered a large employer for all purposes of Insurance Code, Title 8, Chapter 1501 and associated rules, unless it has elected to limit participation in the cooperative to 50 eligible employees, in which case it is considered a small employer for all purposes of Insurance Code, Title 8, Chapter 1501 and associated rules, including guaranteed issuance of coverage.

The proposed amendments to §26.405 make necessary conforming changes to Insurance Code references based on nonsubstantive additions to and corrections in enacted codes pursuant to HB 2018, 79th Legislature, Regular Session.

The proposed amendment to §26.407(a) requires a carrier to make an informational filing with the commissioner concerning intended offers of coverage to a cooperative not later than 30 days before the initial open enrollment period for the cooperative. The proposed amendment to §26.407(b) revises the specific updated information the carrier must provide as part of its §26.407(a) filing with the department concerning its offer of coverage to the cooperative.

The proposed amendments to §26.408 provide that, subject to the limitations of §26.411 addressing health carrier service area provisions, a health carrier may elect not to offer or issue coverage to health group cooperatives or may elect to offer or issue coverage to one or more health group cooperatives of its choosing. The proposed amendments also clarify that a health carrier must comply with the specified guaranteed issuance requirements in offering and issuing coverage to health group cooperatives that have made the election to limit participation to 50 eligible employees.

The proposed amendments to §26.409 make necessary conforming changes to Insurance Code references, including elimination of references to repealed provisions, based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

The proposed amendments to §26.410 make necessary changes to reflect the proposed revision to the caption for §26.407 and also make conforming changes to Insurance Code references based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

The proposed amendments to §26.411 make necessary conforming changes to Insurance Code references based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

SB 805 has eliminated the need for §26.412 by directing a carrier to treat a health group cooperative either as a large employer or as a small employer under the refusal-to-renew provisions of Insurance Code §1501.063. For this reason, the department has proposed the repeal of §26.412, which is published elsewhere in this issue of the Texas Register.

Ana Smith-Daley, Acting Associate Commissioner of Life, Health, and Licensing, has determined that for each year of the first five years the proposed amendments to sections will be in effect there will be no fiscal impact to local governments as a result of the enforcement or administration of the rule. There

will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Smith-Daley has determined that for each year of the first five years the amendments to the sections are in effect, the public benefits anticipated as a result of the proposed amendments to the sections will be facilitation of the creation of health group cooperatives, making employer group coverage more affordable and accessible than it might otherwise be if the employers were purchasing the coverage individually. The proposed amendments, as part of a regulatory effort to encourage employers to continue to provide health coverage for their employees, may also result in coverage for previously uninsured employees. Any costs to persons required to comply with these proposed amendments for each year of the first five years the proposed amendments would be in effect are the result of the enactment of SB 805 and not the result of the adoption, enforcement, or administration of the proposed amendments. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 19, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Ana Smith-Daley, Acting Associate Commissioner, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The department will consider the adoption of the proposed amendments in a public hearing under Docket Number 2629, scheduled for 9:30 a.m. on December 1, 2005, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

The amendments are proposed under the Insurance Code §§1501.010, 1501.058, 1501.0581, and 36.001, and SECTION 7 of SB 805 as enacted by the 79th Legislature, Regular Session. Section 1501.010 authorizes the commissioner of insurance to adopt rules as necessary to implement Chapter 1501. Section 1501.058 requires compliance with federal laws applicable to cooperatives and health benefit plans issued through cooperatives, to the extent required by state law or rules adopted by the commissioner. Section 1501.0581 requires a carrier to make an informational filing with the commissioner concerning intended offers of coverage to a cooperative and requires that the commissioner by rule prescribe the form and the time of the filing. SECTION 7 of SB 805 requires the commissioner, not later than January 1, 2006, to adopt rules under §1501.010 as necessary to implement the change in law made by SB 805. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following provisions are affected by this proposal: Insurance Code Chapter 1501, §§1501.0575, 1501.058, 1501.0581 and 1501.063

§26.401. Establishment of Health Group Cooperatives.

(a) - (c) (No change.)

(d) On receipt of a certificate of incorporation or certificate of authority from the secretary of state, the health group cooperative shall comply with Insurance Code §1501.056 [~~Article 26.14(b)~~] by filing notification of the receipt of the certificate and a copy of the health group cooperative's organizational documents with the Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The organizational documents shall demonstrate the health group cooperative's compliance with Insurance Code §§1501.058, 1501.059 and 1501.061 [~~Article 26.15~~].

(e) A health group cooperative electing to restrict its membership to 50 eligible employees pursuant to Insurance Code §1501.0581(o) must include that election in the organizational documents filed pursuant to subsection (d) of this section.

(f) [~~(e)~~] The board of directors shall, by March 1 of each year, file [~~annually~~] with the department a statement of all amounts collected and expenses incurred for each of the preceding three calendar years. The board shall make the annual filing [~~shall be made~~] on Form Number HGC-1, which [~~and~~] can be obtained from the Texas Department of Insurance, Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, Texas 78714-9104, as well as [~~. The form can also be obtained~~] from the department's internet web site at www.tdi.state.tx.us. The board [~~It~~] shall file Form Number HGC-1 [~~be filed~~] with the Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(g) [~~(f)~~] The provisions of this subchapter shall not be construed to limit or restrict an employer's access to health benefit plans under this chapter or Insurance Code Chapter 1501 [~~26~~].

§26.402. Membership of Health Group Cooperatives.

(a) The membership of a health group cooperative may consist only of small employers or only of large employers, but may not [~~may, at the option of the health group cooperative,~~] consist of both small and large employers.

(b) To be eligible to arrange for coverage pursuant to Insurance Code §1501.058(a)(1) [~~Article 26.15 (a)(1)~~] a health group cooperative must, at the end of its initial open enrollment period, have at least ten participating employers. Thereafter, if the health group cooperative does not, at any time, have at least ten participating employers, to maintain eligibility for coverage the health group cooperative must add additional members by the end of the next open enrollment period to maintain at least ten participating employers. If, by the end of the next open enrollment period the health group cooperative does not have at least ten participating employers, the health carrier may elect to immediately cease providing coverage to the health group cooperative.

(c) Subject to the requirements of Insurance Code §1501.101, [~~Article 26.22~~] and the limitation [~~limitations~~] identified pursuant to subsection (d) [~~§26.407~~] of this section [~~title (relating to Health Carrier Designation As Health Group Cooperative Carrier)~~], a health group cooperative:

(1) shall allow any small employer to join a [~~the~~] health group cooperative that consists of only small employers and, during the initial and annual open enrollment periods, enroll in health benefit plan coverage; and

(2) may allow a large employer to join a [~~the~~] health group cooperative that consists of only large employers and, during the initial enrollment and annual open enrollment periods, enroll in health benefit plan coverage.

(d) A health group cooperative that has elected to limit membership to 50 employees and has filed notification with the department as required by §26.401(e) of this subchapter (relating to Establishment of Health Group Cooperatives) may decline to allow a small employer to join the cooperative if, after the small employer has joined the cooperative, the total number of eligible employees employed on business

days during the preceding calendar year by all small employers participating in the cooperative would exceed 50.

(e) [(d)] A health group cooperative may not use risk characteristics of an employer or employee to restrict or qualify membership in the health group cooperative.

(f) [(e)] An employer's participation in a health group cooperative is voluntary, but an employer electing to participate in a health group cooperative must, through a contract with the health group cooperative, commit to purchasing coverage through the health group cooperative for two years, except as provided for in subsection (g) [(f)] of this section.

(g) [(f)] A contract between an employer and a health group cooperative must allow an employer to terminate without penalty its health benefit plan coverage with a health group cooperative before the end of the two year minimum contractual period required by subsection (f) [(e)] of this section if it can demonstrate to the health group cooperative that continuing to purchase coverage through the cooperative would be a financial hardship in accordance with subsection (h) [(g)] of this section.

(h) [(g)] The contract between an employer and a health group cooperative may define what constitutes a financial hardship for the purposes of subsection (g) [(f)] of this section. If the contract does not define the term, an employer may demonstrate financial hardship if it can show that at the end of the immediately preceding fiscal quarter, or upon receipt of notice of a rate increase, the premium cost to the employer, as a percentage of the employer's gross receipts, increased by a factor of at least .50.

§26.403. Marketing Activities of Health Group Cooperatives.

(a) - (d) (No change.)

(e) A health group cooperative may offer other ancillary products and services to its members that are customarily offered in conjunction with health benefit plans.

§26.404. Health Group Cooperative's Status as Employer.

(a) Except as provided by subsection (b) of this section, a [A] health group cooperative is considered a large [single] employer for all [the] purposes of Insurance Code Chapter 1501 and this chapter [benefit elections and other administrative functions].

(b) A health group cooperative that is composed of only small employers and that has elected to limit participation in the cooperative to 50 employees is considered a small employer for all purposes of Insurance Code Chapter 1501 [26 of the Insurance Code] and this chapter, including guaranteed issuance of coverage.

[(c) A health group cooperative that is composed of small and large employers is considered a small employer in relation to the small employer members for all purposes of the Insurance Code and this chapter. A health group cooperative may elect to extend to all of the large employer members of the health group cooperative the protections of Chapter 26 of the Insurance Code and this chapter. However, unless a contract between a health group cooperative and a health carrier specifies otherwise, this election does not entitle the large employer members to guaranteed issuance of coverage as set forth in Article 26.21(a) of the Insurance Code or §26.8 of this title (relating to Guaranteed Issue; Contribution and Participation Requirements).]

§26.405. Premium Tax Exemption for Previously Uninsured.

(a) In accordance with Insurance Code §1501.0581(g)(4) [Article 26.14A of the Insurance Code], a health carrier providing coverage through a health group cooperative is exempt from premium tax and retaliatory tax for two years for premiums received for a previously uninsured employee or dependent. The two-year period for the exemption begins upon the first date of coverage for the previously uninsured employee or dependent.

(b) For the purposes of this section and Insurance Code §1501.0581(g)(4) [Article 26.14A of the Insurance Code], a previously uninsured employee or dependent is an employee or the dependent of an employee of an employer member of a health group cooperative that did not have creditable coverage for the 63 days preceding the effective date of coverage purchased through the health group cooperative.

(c) (No change.)

§26.407. Health Carrier Filing Prior to Issuance of Coverage to a [Designation As] Health Group Cooperative [Carrier].

(a) A health carrier that intends to [wishes to offer or] issue coverage to a health group cooperative [cooperatives] shall file with the commissioner, not later than 30 days prior to the initial open enrollment period for the cooperative [in accordance with subsection (b) of this section], information concerning the health carrier's offer of coverage to the cooperative [indicating that it is available to offer or issue health benefit plans to health group cooperatives]. The health carrier shall submit this filing to the Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701.

(b) A filing required by subsection (a) of this section shall include:

(1) the name of the health carrier;

(2) the name, address, and telephone number or other contact information of the health group cooperative to which the health carrier intends to offer coverage [a designation of whether or not the health carrier intends to offer or issue health benefit plans to health group cooperatives];

(3) the county or expanded service area in which [a description, by county, of the health group cooperative basic service area, which is the area in which] the health carrier intends to offer coverage to the health group cooperative [is offering or issuing health benefit plans to health group cooperatives];

[(4) if applicable, the extended service areas approved pursuant to §26.411 (relating to Service Areas for Carriers Offering Coverage Through a Health Group Cooperative), in which the health carrier is currently available to offer or issue heath health benefit plans to health group cooperatives;]

[(5) if applicable, information identifying, by county, the health group cooperative(s) that are currently doing business with the health carrier in each geographic service area or expanded service area;]

(4) [(6)] any limitations concerning the number of participating employers or employees in a health group cooperative that the health carrier is capable of administering;

(5) [(7)] the health benefit plan filed for use by the health carrier as a product available to health group cooperatives, or when appropriate pursuant to subsection (c) [(d)] of this section, reference to a previously approved form, including the form number and date of approval; and

(6) [(8)] any other information requested by the department.

[(c) A health carrier shall update a filing required by subsection (a) of this section as necessary to include new counties or extended service areas in which the health carrier wishes to offer or issue cov-

erage to health group cooperatives. If the health carrier has agreed to provide coverage to a particular health group cooperative at the time of updating the certification, the health carrier shall identify the health group cooperative consistent with subsection (b) of this section.]

(c) [(d)] The form filing required by subsection (b)(5) [(b)(7)] of this section shall comply, as appropriate, with all applicable filing requirements under Chapter 3 of this title (relating to Life, Accident and Health Insurance and Annuities) or Chapter 11 of this title (relating to Health Maintenance Organizations).

[(e) A health carrier that has not received approval of the health benefit plan identified in subsection (b)(7) of this section may not offer coverage to a health group cooperative.]

§26.408. Issuance of Coverage to Health Group Cooperatives.

(a) Subject to the limitations identified in §26.411 of this subchapter (relating to Service Areas for Health Carriers Offering Coverage Through a Health Group Cooperative) [§26.407 of this title (relating to Health Carrier Designation As Health Group Cooperative Carrier)], a health carrier may elect to not offer or issue coverage to health group cooperatives or may elect to offer or issue coverage to one or more health group cooperatives of its choosing [that has made a filing with the commissioner indicating that it is offering or issuing small employer health benefit plans to health group cooperatives shall provide coverage to a health group cooperative that requests coverage in the health carrier's basic geographic service area for health group cooperative business, as filed pursuant to §26.407 of this title].

(b) Notwithstanding subsection (a) of this section, a health carrier must comply with the guaranteed issuance requirements of Insurance Code Chapter 1501 and this chapter with respect to offering and issuing coverage to a health group cooperative that:

(1) consists of only small employers;

(2) has elected to restrict membership in the cooperative to 50 employees; and

(3) has notified the department consistent with §26.401(e) of this subchapter (relating to Establishment of Health Group Cooperatives).

[(b) A health carrier may decline to offer coverage to a health group cooperative if the health carrier is:]

[(1) already providing coverage to a health group cooperative in the same county; or]

[(2) actively engaged in assisting an entity with the formation of a health group cooperative. A health carrier is actively engaged in assisting an entity with the formation of a health group cooperative if the health carrier has associated with the entity for the purpose of forming a health group cooperative and the parties have signed a letter of agreement that evidences that the entity intends to form a health group cooperative with the assistance of the health carrier and intends to purchase coverage from the health carrier. This exception is available for no more than 60 days from the date of the letter. This exception period cannot be extended, nor can additional letters of agreement between the parties have the effect of extending this exception period.]

[(c) Subject to the limitations identified in §26.407 of this title, a health carrier that is providing coverage to an employer through a health group cooperative must provide coverage to any employee that elects to be covered under a health benefit plan that is offered through the health group cooperative.]

§26.409. Health Benefit Plans Offered Through Health Group Cooperatives.

(a) A health benefit plan issued by a health carrier through a health group cooperative is not subject to the following state mandates:

(1) the offer of in vitro fertilization coverage as required by Insurance Code §1366.001 and §1366.003 [Article 3.51-6, §3A];

(2) coverage of HIV, AIDS, or HIV-related illnesses as required by Insurance Code §1364.001 and §1364.003 [Article 3.51-6, §3C];

(3) coverage of chemical dependency and stays in a chemical dependency treatment facility as required by Insurance Code Chapter 1368 [Article 3.51-9];

(4) coverage or offer of coverage of serious mental illness as required by Insurance Code §§1355.001 - 1355.007 [Article 3.51-14];

(5) the offer of mental or emotional illness coverage as required by Insurance Code §1355.106 [Article 3.70-2(F)];

(6) coverage of inpatient mental health and stays in a psychiatric day treatment facility as required by Insurance Code §1355.104 [Article 3.70-2(F)];

(7) the offer of speech and hearing coverage as required by Insurance Code Chapter 1365 [Article 3.70-2(G)];

(8) coverage of mammography screening for the presence of occult breast cancer as required by Insurance Code §1356.005 [Article 3.70-2(H)];

(9) standards for proof of Alzheimer's disease as required by Insurance Code §1354.002 [Article 3.78];

(10) coverage of stays in a crisis stabilization unit and/or residential treatment center for children and adolescents as required by Insurance Code §1355.055 and §1355.056 [Article 3.72];

(11) continuation of coverage of certain drugs under a drug formulary as required by Insurance Code §1369.055 [Article 21.52J];

(12) coverage of off-label drugs as required by Insurance Code §§1369.001 - 1369.005 [Article 21.53M];

(13) coverage for formulas necessary for the treatment of phenylketonuria as required by Insurance Code Chapter 1359 [Article 3.79];

(14) coverage of contraceptive drugs and devices as required by Insurance Code §§1369.101 - 1369.109 [Article 21.52L] and §21.404(3) of this title (relating to Underwriting);

(15) coverage of diagnosis and treatment affecting temporomandibular joint and treatment for a person unable to undergo dental treatment in an office setting or under local anesthesia as required by Insurance Code Chapter 1360 [Article 21.53A];

(16) coverage of bone mass measurement for osteoporosis as required by Insurance Code §1361.003 [Article 21.53C];

(17) coverage of diabetes care as required by Insurance Code Chapter 1358 [Article 21.53D];

(18) coverage of childhood immunizations as required by Insurance Code §§1367.051 - 1367.055 [Articles 21.53F] and §1367.053 [20A.09F];

(19) coverage for screening tests for hearing loss in children and related diagnostic follow-up care as required by Insurance Code §§1367.101 - 1367.105 [Article 21.53F];

[(20) offer of coverage for therapies for children with developmental delays as required by Insurance Code Article 21.53F;]

(20) [~~(21)~~] coverage of certain tests for detection of prostate cancer as required by Insurance Code Chapter 1362 [~~Article 21.53F~~];

(21) [~~(22)~~] coverage of acquired brain injury treatment/services as required by Insurance Code Chapter 1352 [~~Article 21.53Q~~];

(22) [~~(23)~~] coverage of certain tests for detection of colorectal cancer as required by Insurance Code Chapter 1363 [~~Article 21.53S~~];

(23) [~~(24)~~] coverage for reconstructive surgery for craniofacial abnormalities in a child as required by Insurance Code §§1367.151 - 1367.154 [~~Article 21.53W~~];

(24) [~~(25)~~] coverage of rehabilitation therapies as required by Insurance Code §1271.156 [~~Article 20A.09(a)(4)~~];

(25) [~~(26)~~] limitations on the treatment of complications in pregnancy established by §21.405 of this title (relating to Policy Terms and Conditions);

(26) [~~(27)~~] coverage for services related to immunizations and vaccinations under managed care plans as required by Insurance Code Chapter 1353 [~~Article 21.53K~~];

(27) [~~(28)~~] limitations or restrictions on copayments and deductibles imposed by §11.506(2)(A) and (B) of this title (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate);

(28) [~~(29)~~] coverage of a minimum stay for maternity as required by Insurance Code §§1366.051 - 1366.059 [~~Article 21.53F~~];

(29) [~~(30)~~] coverage of reconstructive surgery incident to mastectomy as required by Insurance Code §§1357.001 - 1357.007 [~~Article 21.53I~~]; and

(30) [~~(31)~~] coverage of a minimum stay for mastectomy treatment/services as required by Insurance Code §§1357.051 - 1357.057 [~~Article 21.52G~~].

(b) - (c) (No change.)

§26.410. Expedited Approval for Plans Offered Through a Health Group Cooperative.

(a) Unless a health carrier has identified a previously approved health benefit plan in the filing required by §26.407(b)(7) of this title (relating to Health Carrier Filing Prior to Issuance of Coverage to a Health Group Cooperative [~~Health Carrier Designation As Health Group Cooperative~~)], the health carrier must file for approval a health benefit plan that will be offered to a health group cooperative and shall clearly indicate in the filing that the health benefit plan is to be offered to a health group cooperative and is subject to review under this section.

(b) A health benefit plan subject to review under this section and filed with the department by an insurer may be filed as a file and use form consistent with Insurance Code §§1701.051 - 1701.059 and 1701.101 - 1701.103 [~~Article 3.42(c)~~] and §3.5(a)(2) of this title (relating to Filing Authorities and Categories).

(c) An insurer that does not elect to file for approval under subsection (b) of this section shall file the form for approval consistent with Insurance Code §1701.051 and §1701.054 [~~Article 3.42(d)~~] and §3.5(a)(1) of this title. The department shall approve or disapprove the filing within 40 calendar days of receipt of the complete filing.

(d) (No change.)

§26.411. Service Areas for Health Carriers Offering Coverage Through a Health Group Cooperative.

(a) - (b) (No change.)

(c) A health carrier may apply for an expanded service area that includes less than the entire state by submitting an application for approval to the Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701. The health carrier may begin using the expanded service area upon approval or 60 days after the day the application is received by the department unless the application is disapproved by the department within that time. The application must include:

(1) - (2) (No change.)

(3) service areas by ZIP Code shall be defined in a non-discriminatory manner and in compliance with the Insurance Code §§544.001 - 544.004 [~~Articles 21.21-6~~] and 544.051 - 544.054 [~~21.21-8~~]; and

(4) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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28 TAC §26.412

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance proposes the repeal of §26.412, concerning the refusal to renew employer health benefit plans delivered or issued to a health group cooperative. Repeal of §26.412 is necessary because the enactment of Senate Bill (SB) 805, 79th Legislature, Regular Session, obviates the need for the section, since health group cooperatives under its provisions are treated as either large employers or small employers and are regulated under refusal-to-renew provisions applicable to such large employers or small employers.

Ana Smith-Daley, Acting Associate Commissioner for the Life, Health and Licensing Program, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Smith-Daley also has determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be greater regulatory efficiency in administering regulations under Chapter 26, consistent with amendments to Insurance Code Chapter 1501 enacted by the 79th Legislature, Regular Session, in SB 805. There is no anticipated economic cost to persons who are required to comply with the pro-

posed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 19, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Ana Smith-Daley, Acting Associate Commissioner for the Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing must be submitted separately to the Office of Chief Clerk.

The repeal is proposed under the Insurance Code §§1501.010, 1501.058, 1501.0581, and 36.001, and SECTION 7 of SB 805 as enacted by the 79th Legislature, Regular Session. Section 1501.010 authorizes the commissioner of insurance to adopt rules as necessary to implement Chapter 1501. Section 1501.058 requires compliance with federal laws applicable to cooperatives and health benefit plans issued through cooperatives, to the extent required by state law or rules adopted by the commissioner. Section 1501.0581 requires a carrier to make an informational filing with the commissioner concerning intended offers of coverage to a cooperative and requires that the commissioner by rule prescribe the form and the time of the filing. SECTION 7 of SB 805 requires the commissioner, not later than January 1, 2006, to adopt rules under §1501.010 as necessary to implement the change in law made by SB 805. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The proposed repeal affects regulation pursuant to the following statutes: Insurance Code Chapter 1501, §§1501.0575, 1501.058, 1501.0581 and 1501.063

§26.412. Refusal to Renew and Application to Reenter Health Group Cooperative Market.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505106
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.306

The Comptroller of Public Accounts proposes amendments to §3.306, concerning sales of mobile offices, portable buildings, prefabricated buildings, and ready-built homes. The proposed amendments implement legislative changes by the 70th Legislature, Second Called Session, that made delivery charges taxable as part of the sale of tangible personal property, including a portable building whether the delivery charge is separately stated or not. The amendments also implement changes by the 73rd Legislature that made mobile office subject to the limited sales and use tax instead of motor vehicle sales and use tax. New subsections (a)(1) and (b)(1) are added and subsection (b)(2) is deleted. The remaining paragraphs under subsections (a) and (b) are renumbered accordingly. Non-substantive changes are made for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendments will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended rule will be in providing additional information concerning tax responsibilities. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code Chapter 151.

§3.306. Sales of Mobile Offices, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes.

(a) Definitions. The following words and terms[,] when used in this section[,] shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mobile Office--A trailer designed to be used as an office, sales outlet, or work place.

(2) [~~(1)~~] Portable building--A self-contained transportable structure that [~~which~~] does not require attachment to a foundation or to realty in order to be functional. An example of a portable building is a tool shed [~~toolshed~~].

(3) [~~(2)~~] Prefabricated building--A structure, not designed to be a residential dwelling, built at a location other than its permanent site, and that [~~which~~] is later transported in one or more sections and affixed to realty.

(4) [~~(3)~~] Ready-built home--A structure that [~~which~~] does not bear a label or decal issued by the Texas Department of Licensing and Regulation [~~Labor and Standards~~] or the U.S. Department of Housing and Urban Development, but that [~~which~~] is designed to be a residential dwelling constructed[,] precut, partially assembled, or fabricated in whole or in part at a location other than the home site and [~~homesite, which is~~] later transported in one or more sections and assembled on a permanent foundation.

(5) [~~(4)~~] The terms mobile home, ready-built home, prefabricated building, and portable building do not include a house trailer,

as defined [which is defined as a motor vehicle] in and subject to the provisions of [the] Texas Tax Code, Chapter 152, or a manufactured home, as defined in and subject to the provisions of Texas Tax Code, Chapter 158. See §3.72 of this title (relating to Farm Machines, Timber Machines, and Trailers) and §3.481 of this title (relating to Imposition and Collection of Tax).

(b) Application of the sales tax.

(1) A sale of a mobile office is a taxable sale of tangible personal property. Sales tax is due on the total sales price, including delivery charges.

(2) [(1)] A sale of a portable building is a taxable sale of tangible personal property. Sales tax is due on the total sales price, including [excluding separately stated] delivery charges.

[(2) Homes with labels or decals, as described in subsection (a)(3) of this section, are not subject to the limited sales and use taxes but are subject to the manufactured housing sales and use taxes.]

(3) A contract to sell a prefabricated building or a ready-built home is considered a contract for an improvement to realty when the seller is required to build, transport, and affix the structure to a permanent site. See §3.347 [§3. 347] of this title (relating to Improvements to Realty). If the contract requires the seller to perform services such as preparing the foundation, plumbing, sewer hookup, septic tank preparation, supporting, blocking, or leveling, the seller's sales tax responsibilities are determined by whether [or not] the contract separates charges for materials from charges for labor [is lump sum or separated]. See §3.291 of this title (relating to Contractors).

(4) The sale of a ready-built home or a prefabricated building that [which] is not at the time of sale affixed to its permanent site[,] is a taxable sale of tangible personal property if sold to a person responsible for affixing the structure to realty.

(5) A sale of a structure that [which] is affixed to realty is nonetheless a taxable sale of tangible personal property if the purchaser is obligated to remove the structure from its site.

(6) An "in-place" sale of items such as fixtures, machinery, and equipment is considered a sale of tangible personal property if the seller:

(A) is a lessee of the real estate or building to which the items are affixed; and

(B) has the present right to remove the items either as trade fixtures or under the express terms of the lease. Sales tax is due on that portion of the total consideration allocable to the in-place items without regard to the fact of their physical attachment to real property.

(c) Parts and accessories added to manufactured housing by the retailer. Limited sales or use tax is due on parts or accessories installed by the retailer in a manufactured home.

(1) If the retailer sells the home for a lump sum amount that [which] includes both the home and parts, the retailer should not collect limited sales or use tax on the lump sum charge. The retailer must pay limited sales or use tax on the parts at the time of purchase.

(2) If the retailer separates the charge to the customer into one [the] charge for the home and a separate charge for the additional parts, the retailer must collect limited sales tax on the amount charged for the parts. The retailer may issue a resale certificate in lieu of tax when purchasing the parts.

(3) If a third party sells and installs the items, the installer's sales tax responsibilities are determined by whether the contract separates charges for materials from charges for labor [will also be determined by the type of contract, either lump sum or separated, under which the items are installed]. See paragraphs (1) and (2) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 3, 2005.

TRD-200505047
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials.

The amendment to §4.1 is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through October 1, 2005.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through October [~~July~~] 1, 2005. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through October [~~July~~] 1, 2005.

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) regional highway administrator means the director of the Texas Department of Public Safety or the designee of the director;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service Criteria as a guideline.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2005.

TRD-200504987
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 424-2135

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11 - 4.13, 4.16, 4.17

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter B, §§4.11 - 4.13, 4.16, and 4.17 concerning Regulations Governing Transportation Safety.

The amendment to §4.11 updates the rule so that it reflects October 1, 2005 in subsection (a). The amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through that particular date.

Amendments to §4.12 are necessary to implement changes made by House Bill 749 and Senate Bill 1074, as passed by the 79th Texas Legislature (Regular Session). Additional amendments to §4.12 are necessary to implement the requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 10-59).

Amendments to §4.13 are necessary to implement changes made by House Bill 602, as passed by the 79th Texas Legislature (Regular Session). Additional amendments to §4.13 are necessary in order to clarify the initial certifications requirements under the North American Standard Roadside Inspection and Passenger Vehicle Inspection Courses. Changes are also being made to text of §4.13 so that it is uniform throughout the section

and mirrors the Commercial Vehicle Safety Alliance (CVSA) training and certification requirements.

Amendments to §4.16 are necessary to clarify the difference between the subsection regarding assessment of administrative penalties from the subsection regarding payment, collection and settlement of administrative penalties. A further amendment to §4.16 is necessary to simplify the procedure for calculation of administrative penalties, and to eliminate language that is unnecessary because it duplicates factors built into the Federal Uniform Fine Assessment Program used to calculate administrative penalties. The amendment is further necessary to codify the department's policy for further reductions in the assessment of administrative penalties when the gross receipts of the motor carrier are less than one million dollars. The amendment to §4.16 also clarifies department procedures for the release of Impoundment Orders. Non-substantive grammatical corrections are also being made in the amendment to §4.16

The amendment to §4.17 is necessary in order to correct an inaccuracy listed in the current rule.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through October [~~July~~] 1, 2005. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through October [~~July~~] 1, 2005. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely; and,

(4) the minimum levels of financial responsibility required to be maintained by motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) regional highway administrator means the director of the Texas Department of Public Safety;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31; and

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver; and

(D) a vehicle transporting hazardous material requiring a placard.

(E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(F) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(G) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating in intrastate commerce and to for-hire interstate motor carriers exempt from economic regulation. The term "registration" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643, for vehicles operating in intrastate commerce, or Texas Transportation Code, Chapters 643 or 645, for for-hire interstate motor carriers exempt from economic regulation. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapters 643 or 645, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(2) shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

§4.12. Exemptions and Exceptions.

(a) Exemptions. Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) Such regulations shall not apply to the following vehicles when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting [~~a~~] seed cotton [~~module~~]; or,

(D) concrete pumps.

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following eight consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following eight consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for eight consecutive hours.

(3) Drivers in intrastate commerce who are not transporting hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Parts 40 and 382.

(4) The maintenance of a [~~any type of government form, separate company form,~~] driver's record of duty status[~~, or a driver's daily log~~] is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 12 consecutive hours; [~~the owner has another method by which he keeps, as a business record, the date, time and location of the delivery of product or service so that a general record of the driver's hours of service may be compiled; or~~]

(B) the driver has at least 8 consecutive hours off duty separating each 12 hours on duty [~~another law requires or specifies the maintenance of delivery tickets, sales invoices, or other documents which show the date of delivery and quantity of merchandise delivered, so that a general record of the driver's hours of service may be compiled~~]; and

(C) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which [~~the business records generally~~] include the following information:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day; [~~and~~]

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, Part 395.8(j)(2) for drivers used for the first time or intermittently; and[~~.~~]

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(5) The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(6) Unless otherwise specified, a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(7) Unless otherwise specified, a contract carrier is subject only to Title 49, Code of Federal Regulations, Part 391, except 391.11(b)(4) and Subpart E, Parts 393, 395, and 396, except §396.17.

(b) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are as follows:

(1) Title 49, Code of Federal Regulations, Part 393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more consecutive hours off-duty. Drivers in intrastate transportation violating the 70 hour limit provided in this paragraph will be placed out-of-service until no longer in violation.

(3) Drivers of vehicles operating in intrastate transportation claiming the 150 air mile radius exemption in subsection (a)(4) of this section must return to the work reporting location; be released from work within 12 consecutive hours; and have at least 8 consecutive hours off-duty separating each 12 hours on-duty.

(4) Title 49, Code of Federal Regulations, Part 391.11b(1), is not adopted for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(5) Title 49, Code of Federal Regulations, Part 391.11b(2), is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(6) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations 571.121) applicable to the vehicle at the time it was manufactured.

(7) Texas Transportation Code, Chapter 642, concerning identifying markings on commercial motor vehicles shall take precedence over Title 49, Code of Federal Regulations, Part 390.21, for vehicles operated in intrastate commerce.

(8) Title 49, Code of Federal Regulations, Part 390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, Part 390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, [~~public utilities as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, and the Texas Water Code and charged with the responsibility for maintaining essential services to the public to protect health and safety~~] provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death or substantial property damage but does not include routine requests to re-fill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, Parts 390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(9) Title 49, Code of Federal Regulations, Part 380, (Subparts A - D), is not adopted for intrastate motor carriers and drivers. Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, Part 380.500 on or before July 31, 2005.

(10) In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 10-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, Part 395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

§4.13. Authority to Enforce, Training and Certificate Requirements.

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a fixed-site facility, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 100,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of two million or more;

(C) a municipality any part of which is located in a county bordering the United Mexican States; or

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port.

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States, or

(B) a county with a population of 2.2 million or more.

(6) A constable, or deputy constable, designated under Texas Transportation Code, §621.4015, meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway within the county a motor vehicle subject to Texas Transportation Code, Chapter 644.

(7) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course; [~~and~~]

(B) successfully complete the Texas Intrastate Roadside Inspection Course (Part C), if initial certification occurs on or after January 1, 2006, or if recertification is required under subsection (c)(4) of this section; and

(C) participate in an on-the-job training program following the North American Standard Roadside Inspection Course [~~this course~~] with a certified officer and perform a minimum of 32 level I [~~one~~] inspections. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I [~~one~~] inspections on vehicles containing non-bulk quantities of hazardous materials. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I [~~one~~] inspections on vehicles transporting hazardous materials in cargo tanks. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(4) Other Bulk Packaging. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Other Bulk Packaging requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Other Bulk Packaging Course; and

(D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing hazardous materials in other bulk packaging. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(5) Passenger Vehicle. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Passenger Vehicle Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 8 level I or V inspections on passenger vehicles such as motor coaches/buses. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(6) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(7) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training; and

(B) Perform a minimum of 32 Level I inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles containing non-bulk quantities of hazardous materials per calendar year.

(D) If the officer is certified to perform cargo tank inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in cargo tanks per calendar year.

(E) If the officer is certified to perform other bulk packaging inspections, at least eight of the inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in other bulk packaging per calendar year.

(F) If the officer is certified to perform passenger vehicle inspections, at least eight of the inspections (Levels I or V) shall be conducted on passenger vehicles such as motor coaches/buses per calendar year.

(2) In the event an officer does not meet the requirements of subsection (c) of this section, his or her certification shall be suspended by the department. Such suspension action will be initiated by the director or the director's designee.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Roadside Inspection, the Hazardous Materials Inspection Course, the Cargo Tank Inspection Course, the Other Bulk Packaging Inspection Course, and/or the Passenger Vehicle Inspection Course and repeat the specified number of inspections with a certified officer.

(4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) of this section.

§4.16. Administrative Penalties, Payment, Collection, and Settlement of Penalties.

(a) Administrative Penalties.

(1) The compliance review may result in the initiation of an enforcement action based upon the number and degree of seriousness of the violations discovered during the review as well as those factors listed in Title 49, Code of Federal Regulations, Part 385.7. As a result of the enforcement action, the department may impose an administrative penalty against a motor carrier who violates a provision of the Texas Transportation Code, Title 7, Subtitle B, Chapter 522 (relating to Commercial Driver's License), Subtitle C, Chapters 541 - 600 (relating to the Rules of the Road), and Subtitle F, Chapter 644 (relating to Commercial Motor Vehicles), including any amendments not codified in the Texas Transportation Code. Each of these provisions relates to the safe operation of a commercial motor vehicle under Texas Transportation Code, §644.153(b).

(2) The department shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation, and adopts the Federal Uniform Fine Assessment Program as a method of determining penalty assessment. A penalty under this section may not exceed the maximum penalty provided for a violation of a similar federal safety regulation. The department retains the authority to reduce the administrative penalty calculated by the Federal Uniform Fine Assessment Program when the interests of justice require it.

(3) For motor carriers whose verified annual gross revenue is less than one million dollars, the department will assess an alternative administrative penalty according to the schedule listed in the figure, if the alternative administrative penalty would be less than the amount calculated by the Federal Uniform Fine Assessment Program. [~~The amount of the administrative penalty shall be determined by taking into account the following factors:~~]
Figure: 37 TAC §4.16(a)(3)

(A) General motor carriers may be assessed an alternative administrative penalty, as listed in Table 1, that is the following percentage of their gross revenue. [~~For violations other than those under the hazardous material regulations:~~]

~~*[(i)* nature of the violation;]~~

~~*[(ii)* circumstances of the violation;]~~

~~*[(iii)* extent of the violation;]~~

~~*[(iv)* gravity of the violation;]~~

~~*[(v)* degree of culpability;]~~

~~*[(vi)* history of prior offenses;]~~

~~*[(vii)* ability to pay;]~~

~~*[(viii)* the amount necessary to deter future violations;]~~

~~*[(ix)* effect on ability to continue to do business; and]~~

~~*[(x)* such other matters as justice and public safety may require.]~~

(B) Passenger or hazardous materials motor carriers may be assessed an alternative administrative penalty, as listed in Table 2, that is the following percentage of their gross revenue [~~For hazardous material violations, the factors detailed in paragraph (3)(A) of this subsection, are considered in addition to the following factors:~~]

~~*[(i)* any good faith effort to comply with the applicable requirements; and]~~

~~*[(ii)* any economic benefit resulting from the violation.]~~

(4) The department will send a Notice of Claim to the person(s), Firm, or business in violation of this subchapter by certified mail, return receipt requested, by personal service, or another

manner of delivery that records the receipt of the notice by the person responsible requiring a response within 20 business days. The notice will contain the following language in bold, large face type: "FAILURE TO PAY THIS CLAIM OR RESPOND, AS SPECIFIED IN THE NOTICE OF CLAIM, WITHIN 20 BUSINESS DAYS WILL RESULT IN THIS NOTICE OF CLAIM BEING DEEMED A ' FINAL DEPARTMENT DECISION.' A PERSON WHO IS SUBJECT TO AN ADMINISTRATIVE PENALTY IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, §644.153 IS REQUIRED TO PAY THE ADMINISTRATIVE PENALTIES OR RESPOND TO THE DEPARTMENT'S NOTICE OF CLAIM. A PERSON WHO FAILS TO PAY, OR BECOMES DELINQUENT IN THE PAYMENT OF THE ADMINISTRATIVE PENALTIES IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, §644.153 SHALL NOT OPERATE OR DIRECT THE OPERATION OF A COMMERCIAL MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE UNTIL SUCH TIME AS THE ADMINISTRATIVE PENALTIES HAVE BEEN REMITTED TO THE DEPARTMENT."

(b) Payment, Collection and Settlement of Administrative Penalty.

(1) Payment. A person who is subject to an administrative penalty imposed by the department as authorized by Texas Transportation Code §644.153(c) is required to pay the administrative penalty. If payment of costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state has been ordered, any payment of less than the full amount owed will be applied first to the costs, fees, expenses and attorney's fees, then the balance of the payment, if any, will be applied to the administrative penalty. The administrative penalty may be paid through one of the following options:

(A) Full Payment. Full payment of the administrative penalty in the form of a check, cashier's check, or money order made payable to the Department of Public Safety shall be submitted to the Texas Department of Public Safety, Attn: Motor Carrier Bureau, MSC 0522, 6200 Guadalupe, Building P, Austin, Texas 78752-4019. The department may allow payments to be made by electronic funds transfer or valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department.

(i) The department may assess a discount, convenience, or service charge for a payment transaction for electronic funds transfers or credit card payments in an amount that will cover the direct costs to the department for accepting that payment.

(ii) The department may assess a service charge of $30 for a payment transaction that is dishonored or refused for lack of funds or insufficient funds.

(iii) Any charge added to an administrative penalty under paragraph (1)(A)(i) and (1)(A)(ii) of this subsection must be paid in full, along with the administrative penalty. The department's remedies, including issuing and continuing an impoundment order, apply to the charges as well as the administrative penalty.

(B) Installment Payments.

(i) A person(s), firm, or business may, upon approval of the director or the director's designee, be allowed to make installment payments of an administrative penalty, costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state upon submission of adequate proof of inability to pay the full amount of the claim. An application shall be submitted on a form approved by the department.

(ii) The person(s), firm, or business requesting the installment agreement must submit adequate documentation to support the request and make all relevant financial records of the person(s), firm, or business available to the department for inspection and verification.

(iii) In the event of a default of the installment agreement by the person(s), firm, or business, then the remaining balance of the installment agreement will be due immediately.

(iv) Upon default under an installment agreement, or failure to respond to the notice of claim within 20 business days, the person(s), firm, or business is no longer eligible for installment payments.

(v) Installment payments will be in the form, and subject to service charges, described in paragraph (1)(A) of this subsection.

(2) Non-Payment of Administrative Penalty. A person who fails to pay, reverses an electronic funds transfer payment or credit card payment, or otherwise becomes delinquent in the payment of the administrative penalty imposed by the department as authorized by Texas Transportation Code, §644.153(c) shall not operate or direct the operation of a commercial motor vehicle on the highways of this state until such time as the administrative penalty has been remitted to the department. The department will make every effort to collect an administrative penalty once an enforcement action has been deemed as a Final Departmental Decision, including referring the administrative penalty to the Office of the Attorney General, or issuing an Impoundment [~~impoundment~~] Order.

(A) Issuance of an Impoundment Order. Pursuant to Texas Transportation Code, §644.153(o) - (s), the department will issue an Impoundment Order [~~impoundment order~~] for the impoundment of any commercial motor vehicle that is operated or directed by the person(s), firm, or business that fails to pay an administrative penalty issued under this subchapter.

(B) Timing and Content of Impoundment Order. The department shall issue an Impoundment Order if the person(s), firm, or business fails to respond as specified to the Notice of Claim within 20 business days, or becomes delinquent in the payment of the full amount under subsection (b)(1)(A) of this section or any installment payments under subsection (b)(1)(B) of this section when they become due. The Impoundment Order will contain the following information:

(i) Motor Carrier's name, address, city, zip code and telephone number;

(ii) The motor carrier's Texas Department of Transportation, United States Department of Transportation, or Motor Carrier number, if any;

(iii) The amount of delinquent penalty assessment;

(iv) The date the Impoundment Order was issued;

(v) A contact number for the Motor Carrier Bureau;

(vi) Notice that the Impoundment Order [~~impoundment~~] will be lifted upon receipt of full payment of the administrative penalty [~~at the Motor Carrier Bureau or the designated Commercial Vehicle Enforcement employee~~] as described in paragraph (5) [~~(5)(C)(i) or (ii)~~] of this subsection; and,

(vii) In bold, conspicuous letters, notice that the carrier is responsible for all costs of storage of the vehicle and its cargo, and towing.

(3) Prior to impounding any vehicle, the trooper shall verify the Impoundment Order is still valid. Verification can only be made by the Manager of the Motor Carrier Bureau or the Manager's designee during regular business hours, or via electronic inquiry into the Motor Carrier Bureau's Vehicle Impoundment Database after regular business hours. If a trooper is unable to verify the Impoundment Order is in force, then the vehicle shall not be impounded.

(4) Once a vehicle is impounded, the trooper impounding the vehicle shall immediately ensure the motor carrier is notified of impoundment of the vehicle. The trooper will inform the motor carrier of the name, location, and telephone number of the vehicle storage facility where the vehicle is impounded, notice the vehicle will not be released until the administrative penalty has been paid, and a contact number for the Motor Carrier Bureau. When a vehicle is impounded after regular business hours, the trooper will notify the Motor Carrier Bureau as soon as possible but not later than the next regular business day.

(5) Release of Impoundment Order and Impounded Vehicles.

(A) To cancel the Impoundment Order and to release a vehicle from impoundment, the motor carrier shall pay the administrative penalty in full, including costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state.

(B) The payment of the administrative penalty must be for the full amount. The payment must be made by cashier's check or money order payable to the Texas Department of Public Safety.

(C) The payment can be made in one of two ways only:

(i) by sending it to the following address as indicated: Texas Department of Public Safety, Motor Carrier Bureau, MSC 0522, 6200 Guadalupe, Bldg. P, Austin, Texas 78752-4019, Attn: Accounting Clerk, Impoundment Notice; or

(ii) directly to the trooper at the time of the actual impoundment or to any Commercial Vehicle Enforcement employee at any department regional, district or sub-district office. If payment is made on an impounded vehicle after regular business hours, the trooper will notify the Motor Carrier Bureau as soon as possible but not later than the next regular business day.

(D) The impounded vehicle will be released and the impoundment order will be cancelled only upon receipt of payment as specified under paragraph (5)(C)(i) or (ii) of this subsection.

§4.17. Notification and Hearing Processes.

(a) Notification.

(1) The department will notify a motor carrier of an enforcement action by the issuance of a claim letter as described in §4.16(a)(4) of this title (relating to Administrative Penalties, Payments, Collection and Settlement of Penalties).

(2) The notification may be submitted to the motor carrier's last known address as reflected in the records of the department by certified mail, return receipt requested, or personal service, or another manner of delivery that records the receipt of the notice by the person responsible. A notification sent by mail shall be presumed to have been received by the motor carrier five days after the date of the mailing.

(3) The motor carrier shall respond within 20 business days of receipt of the claim letter with one of the following options:

(A) Payment of the claim in the full amount as outlined in the claim letter; or

(B) Request, in writing, to make installment payments; or

(C) Request, in writing, an informal hearing; or

(D) Request, in writing, an administrative hearing.

(4) A request under paragraph (3)(C) or (D) of this subsection must contain the following:

(A) A concise statement of the issues to be presented at the hearing, including the occurrence of the violations, the amount of the penalty, or both;

(B) defenses the carrier asserts to the department's claim; and

(C) supporting documents to show defenses and/or financial condition of the carrier.

(5) A request under paragraph (3)(C) of this subsection that does not contain the information required in paragraph (4) of this subsection may, after notice and a reasonable opportunity to correct the defect, be set for an administrative hearing rather than an informal hearing, at the discretion of the department.

(b) Informal hearing.

(1) If requested, the department will hold an informal hearing to discuss a penalty recommended under this section. Such hearing will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's designee.

(2) An informal hearing shall not be subject to rules of evidence and civil procedure except to the extent necessary for the orderly conduct of the hearing. The department will summarize the nature of the violation and the penalty, and discuss the factual basis for such. The motor carrier will be afforded an opportunity to respond to the allegations verbally and/or in writing.

(3) After the conclusion of the informal hearing, the hearing officer will issue a Memorandum of Decision, which will be provided to the motor carrier. The Memorandum of Decision will contain the following:

(A) a statement of findings by the hearing officer, including a statement of dismissal of charges, modification of penalties, or affirmation of penalties; and

(B) if the penalties are modified or affirmed, the Memorandum of Decision will be accompanied by a revised claim letter requiring the motor carrier to respond within 20 business days of receipt of claim letter with one of the following options:

(i) Payment of the claim in the full amount as outlined in the claim letter; or

(ii) Request to make installment payments; or

(iii) Request an administrative hearing before the State Office of Administrative Hearings.

(c) Administrative Hearing.

(1) If the motor carrier requests an administrative hearing, as required by subsection (a)(3)(D) or (b)(3)(B)(iii) of this section, the department shall request an administrative hearing before the State Office of Administrative Hearings. The department will provide written notice by certified mail, return receipt requested, or by personal service of such action to the motor carrier. The administrative law judge for the State Office of Administrative Hearings shall issue a proposal for decision setting out the judge's findings of fact, conclusions of law and recommendations in accordance with agency rules and statutes, includ-

ing a recommendation regarding the award and amount of costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state.

(2) The director may adopt those findings and make it part of the director's order; or the director may, pursuant to §2001.058(e), Government Code, increase or decrease the amount of the penalty recommended by the administrative law judge. Notice of the director's order and proposal for decision shall be given to the affected person as required by Chapter 2001, Government Code, and must include a statement that the person is entitled to seek a judicial review of the order. Before the 31st calendar day after the date the director's order becomes final as provided in §2001.004, Government Code, the person must:

(A) pay the penalty in full;

(B) pay the penalty in full and file a petition for judicial review contesting:

(i) the occurrence of the violation(s);

(ii) the amount of the penalty; or

(iii) both the occurrence of the violation(s) and the amount of the penalty.

(C) without paying the penalty, file a petition for review contesting:

(i) the occurrence of the violation(s);

(ii) the amount of the penalty; or

(iii) both the occurrence of the violation(s) and the amount of the penalty.

(3) A contested case under this subsection will be governed by Texas Government Code, Chapter 2001, subchapters C and D, Texas Transportation Code, §644.153, and 37 TAC, Chapter 29 of this title (relating to General Rules of Practice and Procedure), and not by Title 49, Code of Federal Regulations, Part 386, Subparts D and E.

(d) A final department decision is subject to judicial review under the substantial evidence rule, Texas Government Code, §2001.174. For purposes of collection of the administrative penalty, Final Departmental Decision is defined as:

(1) the most recent claim letter issued to a motor carrier who fails to request an informal hearing or an administrative hearing within 20 business days of receipt of the Notice of Claim; or

(2) the most recent [~~receipt~~] claim letter issued to a motor carrier who fails to pay or becomes delinquent in the payment of an administrative penalty as outlined in §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties); or

(3) a Final Order issued by the director as a result of an administrative hearing as outlined in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2005.

TRD-200504988

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 424-2135

♦ ♦ ♦

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.2, §87.4

The Texas Youth Commission (the commission) proposes an amendment to §87.2, concerning Resocialization Program, and new §87.4, concerning Resocialization Earned Privilege System.

The amendment to §87.2 will add references to rules which explain in greater detail certain aspects of the Resocialization program.

New §87.4 will establish by rule the commission's system for awarding privileges based on youth progress through the Resocialization program.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be the provision of positive reinforcement for youth to participate and progress in the Resocialization program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment and new section are proposed under the Human Resources Code, §61.076, which provides the commission with the authority to require youth in its custody to participate in moral, academic, vocational, physical, and correctional training and activities.

The proposed rules affect the Human Resources Code, §61.034.

§87.2. Resocialization Program.

(a) - (b) (No change.)

(c) Each TYC-operated residential [~~TYC~~] facility will maintain a program of Resocialization [~~resocialization~~] consisting of three areas: Academic/Workforce Development, Behavior, and Correctional Therapy. [~~four cornerstones: correctional therapy, education, discipline, and work.~~]

(d) All aspects of the TYC Resocialization [~~resocialization~~] program will be competency-based [~~competency based~~] with clearly defined performance expectations as set forth in §87.3 of this title (re-

lating to Resocialization Phase Requirements and Assessment). [~~Individual progress will be measured monthly and be based on all identified treatment needs and strengths.~~]

(e) Individual progress will be measured monthly and be based on all identified treatment needs and strengths. Youth in residential placements will be assessed by a Phase Assessment Team. Youth on parole in the community will be assessed by the assigned parole officer.

(f) [~~(e)~~] Phases of Resocialization [~~resocialization~~] are progressive. [~~Youth will be assessed by a treatment team at each residential placement for the appropriate phase. Parole youth will be assessed by the assigned parole officer.~~] Higher phases are associated with increased expectations of responsibility, [~~and~~] decreased need for direct staff supervision, and an increase in earned privileges as set forth in §87.4 of this title (relating to Resocialization Earned Privilege System).

(g) [~~(f)~~] TYC facilities shall maintain a structured, 16-hour day for all youth. During each day, the youth will work on components of the Resocialization [~~resocialization~~] program.

(h) [~~(g)~~] TYC facilities shall provide for and youth will participate in a structured, individually appropriate educational program or equivalent.

(i) [~~(h)~~] TYC facilities shall provide and eligible youth may participate in work experiences.

(j) [~~(i)~~] TYC facilities shall provide and youth will participate in regular physical training programs.

(k) [~~(j)~~] TYC facilities shall provide and youth will participate in behavior, core intervention, and positive skills groups. [~~correctional therapy. Therapy will consist of three types of required group sessions for all youth. Participation in behavior, core intervention, and life skills groups will be required.~~]

(l) [~~(k)~~] Staff responsible for provision of Resocialization [~~resocialization~~] service delivery will receive appropriate training and certification.

§87.4. Resocialization Earned Privilege System.

(a) Purpose. The purpose of this rule is to establish a system of rewards and positive reinforcement as incentives to encourage and acknowledge youth participation and progress in the Resocialization treatment program.

(b) Applicability.

(1) Implementation of this rule shall not restrict any youth rights as set forth in Chapter 93 of this title. Privileges earned and awarded pursuant to this rule shall be in addition to services provided in the course of administering the youth's regular program.

(2) This rule applies to all Texas Youth Commission (TYC)-operated high restriction facilities as described herein.

(3) For an overview of the Resocialization program, see §87.2 of this title.

(4) For requirements concerning Resocialization phase assessment, see §87.3 of this title.

(5) This rule does not apply to youth:

(A) while in a segregation program; see §97.36 of this title.

(B) whose placement is the Aggression Management Program; see §95.21 of this title.

(c) Explanation of Terms Used. The following terms, as used in this rule, shall have the following meanings unless the context clearly indicates otherwise.

(1) Custody and Supervision Rating (CSR)--has the meaning assigned by §97.7 of this title.

(2) Dorm Incentive--means a reward given to all youth on a dorm to recognize achievement of a defined performance objective during a specified period of time.

(3) Expanded Privileges--means privileges that are appropriate and feasible for implementation at some facilities, but are not practical for implementation at all facilities due to differences in population, physical plant design, geographic location, 16-hour schedule and available resources.

(4) Loss of Privileges--the immediate reduction of privileges in two or more privilege areas for a period not to exceed 35 days as a disciplinary sanction.

(5) Phase--means the lowest assessed phase in the three areas of Resocialization, as described in §87.3 of this title, which determines the youth's phase for purposes of implementing this rule. For example, a youth assessed at phase A3,B3,C2 would be considered as phase 2 when determining eligibility for phase-based privileges.

(6) Privilege--means an activity or possession that a youth earns by complying with behavioral expectations and progressing in treatment.

(7) Privilege Restriction--the immediate reduction of privilege in one privilege area for a period not to exceed three (3) days as a disciplinary sanction.

(8) Standard Privileges--means privileges that any facility is capable of implementing regardless of differences in population, physical plant design, geographic location, 16-hour schedule or available resources.

(9) Standard Privilege Grid--means a document which establishes, for each Standard Privilege, the baseline for the phase at which a youth becomes eligible for certain privileges and/or the amount of privilege awarded at each phase. The document is available on the agency's Internet web site and is approved by the assistant deputy executive directors for Juvenile Corrections and Rehabilitation Services. A separate Standard Privilege Grid is maintained for the Mental Health Treatment Program and Program for Offenders with Mental Retardation.

(10) Weekend--means Friday after dinner through Sunday before dinner.

(d) Privilege System Components.

(1) Standard Privileges.

(A) Applicability. Standard Privileges do not apply to youth assigned to the following placements, which have privilege systems tailored to their specialized populations as described in subsections (e) and (f):

(i) Marlin Orientation and Assessment Unit;

(ii) the Mental Health Treatment Programs at the Corsicana Residential Treatment Center and the Crockett State School; or

(iii) the Program for Offenders with Mental Retardation at the Corsicana Residential Treatment Center.

(B) Implementation. Each facility shall provide privileges in each of the categories listed in subparagraph (C) below. Gen-

erally, the amount of the privilege awarded and the youth's eligibility for certain privileges expands as a youth's phase increases. At a minimum, each facility shall provide for privilege amounts and eligibility levels for each Phase as specified in the Standard Privilege Grid. A facility may choose to provide more than the minimum amount of a privilege for a given phase. However, eligibility for a privilege may not be awarded at a lower phase than is specified on the Standard Privilege Grid.

(C) Standard Privilege Categories. Standard Privileges are composed of 15 privilege categories:

(i) Additional Telephone-Tex-An - extra facility-funded telephone calls, made in the presence of staff, to a youth's parents, guardian, family members, approved volunteers or other adult responsible for the youth.

(ii) Additional Youth/Family Funded Telephone- extra collect or pre-paid telephone calls funded by the youth or the youth's family and restricted to a youth's parents, guardian, family members, approved volunteers or other adult responsible for the youth. These calls may be made only during hours when they do not interfere with required or scheduled activities.

(iii) Additional Stamps- extra postage and stationery for one ounce, domestic letters furnished by each facility on a weekly basis.

(iv) Weekend Late Night - bedtimes later than the facility's regularly scheduled bedtimes on Friday and Saturday evenings and approved holidays.

(v) Entertainment - unstructured time allotted each weekend for participation in chosen activities (e.g., board games, cards, dominoes, letter writing, reading, hobbies) as determined by each facility. This privilege is in addition to the Weekend Late Night privilege.

(vi) Meals - extra snacks and monthly meals purchased from an establishment in the community, furnished by the facility.

(vii) Representative - the opportunity to serve as a grievance clerk or participate on a facility's student council.

(viii) Personal Possessions- Certain items, in addition to pictures and letters, which each youth is allowed according to phase. All items are purchased with money from the youth's trust fund or by the youth's family and must be sent directly to the facility from the store. Shoes will be solid white, solid black, or mixed white and black only, including logos. Facilities will not be liable for lost, stolen, or damaged personal items. Each phase will have its specific privilege in addition to the privilege from the preceding phase.

(ix) Canteen - youth will be allowed to spend up to a maximum amount of money from their trust fund, at least once per month, to purchase snack items and/or approved personal hygiene items from a facility-based commissary or canteen, or from community vendors via staff. Food items will not be taken back to a youth's living area, and hygiene items will be stored in the same manner as facility-issued hygiene products.

(x) Grooming (Girls) - as the youth progresses in phase, she will be allowed to purchase specified make-up items, except for lip gloss and pressed power which are offered at the facility's expense, to encourage the youth to maintain a pro-social appearance. Each phase will have its identified privilege in addition to the one from the preceding phase.

(xi) Grooming (Boys) - as the youth progresses in phase, he will be allowed to choose from agency-approved, socially-acceptable hairstyles. Males must be clean-shaven at all times.

(xii) Work- pursuant to §91.61 of this title, youth may earn eligibility for on-campus, paid employment positions. Job positions will be determined by the facility, as will duties, expectations, salary, and disciplinary measures.

(xiii) Movement - eligible youth will be allowed on-campus, unescorted movement from one building to another, within the facility's 16-hour schedule. Each facility will devise a check-in system for accountability. CSR may be taken into consideration in awarding this privilege.

(xiv) Off-Campus Visitation - youth eligible under phase requirements and CSR (see §97.7 of this title) will be allowed off-campus visitation with their family during regularly scheduled visitation hours. If the youth has a high CSR, he/she may be eligible for this privilege only with the approval of the chief local administrator (CLA). Each facility will determine how many monthly off-campus visits eligible youth will be allowed.

(xv) Off-Campus Activities - youth eligible under phase requirements and CSR (see §97.7 of this title) will be allowed to participate in staff supervised off-campus activities once a month or more and as scheduled by each facility. If the youth has a high CSR, he/she may be eligible for this privilege only with the approval of the chief local administrator (CLA).

(2) Expanded Privileges.

(A) Applicability. Expanded Privileges do not apply to youth assigned to the following placements, which have privilege systems tailored to their specialized populations as described in subsections (e) and (f):

(i) Marlin Orientation and Assessment Unit;

(ii) the Mental Health Treatment Programs at the Corsicana Residential Treatment Center and the Crockett State School; or

(iii) the Program for Offenders with Mental Retardation at the Corsicana Residential Treatment Center.

(B) Implementation. Each facility shall develop a local system of awarding and delivering at least five (5) expanded privileges for general population and at least seven (7) expanded privileges for specialized treatment population. The number of expanded privileges provided for the specialized treatment population shall be higher than the number provided for general population.

(3) Dorm Incentives.

(A) Applicability. Dorm incentives shall be provided at all TYC-operated high restriction facilities.

(B) Implementation.

(i) Each facility shall provide at least one operationally feasible dorm incentive. The facility shall develop a local system for awarding and delivering the dorm incentive(s) at least once per month.

(ii) A facility may provide more than one dorm incentive and may periodically change the incentive based upon facility circumstances and performance goals.

(iii) Dorms may compete with other dorms on campus to achieve the defined performance objective, or performance ob-

jectives may be set for an individual dorm without competition from other dorms.

(e) Special Programs Privilege System.

(1) Applicability. Local systems for awarding privileges shall be implemented in the following programs:

(A) the Mental Health Treatment Program (MHTP) at the Corsicana Residential Treatment Center and the Crockett State School; and

(B) the Program for Offenders with Mental Retardation (POMR) at the Corsicana Residential Treatment Center.

(2) Components. The MHTP and POMR privilege system integrates a program based on a daily point system which provides immediate, daily, weekly and monthly reinforcement, into the standard phase-based privilege system.

(A) Standard Phase-Based Privileges.

(i) The MHTP and POMR programs shall provide the following 11 Standard Privilege categories, as described in subsection (d) of this section:

(I) Additional Telephone-Tex-An;

(II) Additional Youth/Family Funded Telephone;

(III) Additional Stamps;

(IV) Bedtime;

(V) Being a Representative;

(VI) Personal Possessions;

(VII) Canteen;

(VIII) Grooming (Girls);

(IX) Grooming (Boys);

(X) Work;

(XI) Off-Campus Visitation;

(XII) Off-Campus Activities.

(ii) The MHTP and POMR programs shall provide, at a minimum, for privilege amounts and eligibility levels for each Phase as specified in the in the MHTP/POMR Standard Privilege Grid, available on the TYC agency website.

(B) Additional Point-Based Privileges.

(i) Calculation. Each staff member awards 0, 1, 2, or 3 points per shift worked with the youth. Points are awarded each of three areas

(I) Compliance with program rules and expectations;

(II) Demonstration of targeted skills;

(III) Targeted problem behaviors.

(ii) Privilege Categories. Based on a youth's average point score, privileges are awarded as set forth in the MHTP/POMR Privilege Grid, available on the TYC agency website. Privileges shall be awarded in the following categories:

(I) Daily Privileges- points are averaged daily for youth to earn access to activities including, but not limited to, table games, arts and crafts supplies, electronic games, and television.

(II) Weekly Privileges- points are averaged weekly for youth to earn participation in special activities on the dorm or campus.

(III) Monthly Privileges- points are averaged monthly for youth to earn participation in or eligibility for activities including, but not limited to, major campus-wide co-ed activities, nomination for student of the month, and on-campus community meals.

(f) MOAU Privilege System. The Marlin Orientation and Assessment Unit (MOAU) shall provide a program of point-based, short-term incentives and rewards.

(1) Calculation. Each staff member awards 0, 1, 2, or 3 points per shift worked with the youth. Points are awarded in each of two areas:

(A) Compliance with program rules and expectations; and

(B) Demonstration of targeted skills.

(2) Privilege Categories. Based on a youth's average point score, privileges are awarded as set forth in the MOAU Privilege Grid, available on the TYC agency website. Privileges shall be awarded in the following categories:

(A) Daily Privileges- points are averaged daily for youth to earn extra time for certain activities including, but not limited to, shower time, recreation, bedtime, television and letter writing/drawing.

(B) Weekly Privileges- points are averaged weekly for youth to earn participation in special activities on the dorm or campus.

(g) Primary Intervention Program (PIP). For the effect a PIP placement will have on youth privileges, see §95.16 of this title.

(h) Remediation. Youth placed on remediation in Academic/Workforce Development or Correctional Therapy, where the phase remediated is the lowest phase, will receive Standard Privileges and Expanded Privileges of the next lowest phase. For example, a youth on Phase A4,B4,C4R with remediation in Correctional Therapy would receive Phase 3 privileges. A youth on Phase A4,B3,C4R with remediation in Correctional Therapy would also receive Phase 3 privileges since another area is lower.

(i) Parole Revocation. Youth awaiting phase re-assessment following parole revocation will receive Phase 0 Standard Privileges and Expanded Privileges until re-assessed.

(j) Privilege Restrictions and Loss of Privileges.

(1) Applicability.

(A) Restriction and/or removal of privileges may be applied only to privileges which a youth earns as a result of his/her phase. Restriction or removal of privileges shall have no effect on access to services provided as a matter of basic youth rights, as set forth in Chapter 93 of this title.

(B) The following privilege categories are not subject to privilege restriction or loss of privileges:

(i) Additional Telephone-Tex-An;

(ii) Additional Youth/Family Funded Telephone;

(iii) Additional Stamps;

(iv) Being a Representative;

(v) Personal Possessions;

(vi) Grooming.

(2) Implementation.

(A) Privilege Restrictions.

(i) Privilege restrictions may be applied for Category II rule violations, as defined in §95.3 of this title.

(ii) Privilege restrictions must be:

(I) no longer than three (3) days in duration;

(II) administered by a Juvenile Corrections Officer (JCO), Primary Service Worker (PSW), or Program Administrator (PA) with responsibility for supervision of the youth;

(III) applied through a documented Level III Hearing (see §95.57 of this title) ;

(IV) reviewed by the JCO V or VI within one day of application if the restriction was administered by a JCO I-IV, or

(V) reviewed by the PA or designee within one day of application, if the restriction was administered by a PSW; and

(VI) approved by a PA or designee if the restriction is for more than 24 hours in duration.

(iii) Only one (1) privilege restriction may be applied as a disciplinary sanction for a Category II rule violation. An additional privilege restriction may be applied as a disciplinary sanction for a subsequent Category II rule violation. If the additional privilege restriction is applied in the same privilege category, the aggregate duration of the restriction must not exceed seven (7) calendar days.

(B) Loss of Privileges.

(i) Some or all of a youth's earned privileges, other than those excepted from restriction in paragraph (1)(B) above, may be temporarily removed as a result of a Category I rule violation, as defined in §95.3 of this title.

(ii) Loss of Privileges must be:

(I) no longer than 35 days in duration;

(II) administered by JCO V, JCO VI, PSW or PA with responsibility for supervision of the youth;

(III) applied through a documented Level III Hearing (see §95.57 of this title);

(IV) reviewed by the JCO V or VI within one day of application if the restriction was administered by a JCO I-IV; or reviewed by the PA or designee within one day of application if the restriction was administered by a PSW; and

(V) approved by a PA or designee, if the restriction is for more than seven (7) days in duration.

(iii) If a staff member other than the PA applies the Loss of Privileges sanction, the PA will review the decision within one working day, and approve, disapprove, or modify the terms of the disciplinary sanction.

(3) Review.

(A) The JCO V or VI reviews all restrictions issued on a daily basis for appropriateness and compliance with policy.

(B) The PA, assistant superintendent and superintendent have the authority to overturn any privilege restriction that he/she determines to be inappropriate or excessive.

(k) Reinstatement of Lost Privileges as a Consequence of a Level II Hearing. If during the course of a Level II hearing a finding of not true is made for a Category I rule violation for which loss of privileges was administered, the youth shall immediately regain all lost privileges.

(l) Complaints Regarding Privilege Restriction or Loss of Privileges. Youth may grieve the application of a privilege restriction or loss of privileges through the youth complaint system.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505095
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 424-6014

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CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER A. BASIC SERVICES

37 TAC §91.5

The Texas Youth Commission (the commission) proposes an amendment to §91.5 concerning Clothing, Hair and Symbolic Expression. The amendment to the section will add a reference to §87.4, concerning Resocialization Earned Privilege System, which is proposed for adoption in this issue of the *Texas Register*. The amendment also removes content relating to youth hairstyles which is addressed in new §87.4.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section are in effect the public benefit anticipated as a result of enforcing the section will be availability of accurate and up-to-date agency policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§91.5. Basic Youth Rights.

(a) - (b) (No change.)

(c) Dress Code.

(1) - (8) (No change.)

(9) Youth may be allowed to purchase some personal clothing pursuant to §87.4 of this title (relating to Resocialization Earned Privilege System). [See ~~(GAP)~~ ~~§91.7~~ ~~of~~ ~~this~~ ~~title~~ ~~(relating~~ ~~to~~ ~~Youth Personal Property).~~]

(10) (No change.)

(d) Piercing.

(1) (No change.)

(2) In the case of a unique health or safety issue, a youth in a medium restriction program may not be allowed to wear earrings. These restrictions will be made on an [~~a~~] individual basis and documented in the youth's Individual Case Plan (ICP).

(3) (No change.)

(e) Hair.

(1) - (4) (No change.)

(5) Youth in TYC institutions or secure contract programs will be held to the following standards:

(A) Hairstyle requirements for males will be based upon the youth's progress in the agency's Resocialization [~~established treatment~~] program as set forth in §87.4 of this title. [~~in~~ ~~order~~ ~~to enhance~~ ~~the~~ ~~youth's~~ ~~incentive~~ ~~to participate~~ ~~in such program.~~ ~~Males on phases 0, 1, 2 and 3 shall have their hair cut to a length equivalent to a #1 or #2 Oster.~~ ~~Males on phase 4 may grow their hair no longer than the collar of a polo shirt.~~]

(B) In secure facilities populated only by emotionally disturbed youth, female youth [~~all females~~] may be restricted to maintain their hair length above the shoulder for safety reasons. In other facilities, female youth [~~individuals~~] may be restricted to maintain their hair length above the shoulder if there is reason to believe the hair may be used for self-injury, used to conceal other objects used for self-injury, or used to obscure staff's view of the neckline and conceal evidence of self-injury. Individual restrictions and the justification shall be documented in the youth's Individual Case Plan (ICP).

(C) Female youth [~~Hair~~] may be required to tie their hair [~~be tied~~] up or back in a pony-tail (if it is long enough to obscure staff's view of the neckline or face) with one (1) black, white, or black and white scrunchie, elastic band, or rubber band that will be provided by the facility.

(D) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505096
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 424-6014

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CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.1

The Texas Youth Commission (the commission) proposes an amendment to §93.1, concerning Basic Youth Rights. The amendment to the section will add a reference to a new rule §87.4, which is proposed in this issue of the *Texas Register*.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be availability of accurate and up-to-date agency policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§93.1. Basic Youth Rights.

(a) - (e) (No change.)

(f) Right to Personal Possessions. Youth have the right to keep and use personal possessions so long as these possessions do not endanger the safety of staff and youth, disrupt programs and activities, encourage delinquent subcultural values, or appeal to the unique vulnerability of youth to improper influences. Youth shall not be in possession of contraband as defined by §91.7 of this title (relating to Youth Personal Property). TYC may also limit a youth's personal possessions, including items:

(1) - (2) (No change.)

(3) based upon the youth's progress in the agency's Resocialization treatment program. See §87.4 of this title (relating to Resocialization Earned Privilege System; or[~~established treatment program in order to enhance the youth's incentive to participate in such program; or~~]

(4) (No change.)

(g) - (p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200505097

Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 424-6014

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CHAPTER 95. YOUTH DISCIPLINE SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.13

The Texas Youth Commission (the commission) proposes an amendment to §95.13, concerning Disciplinary Consequences. The amendment to the section will add a reference to a new rule §87.4, which is proposed in this issue of the *Texas Register*.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be availability of accurate and up-to-date agency policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§95.13. On-Site Disciplinary Consequences.

(a) (No change.)

(b) Applicability.

(1) See [~~(GAP)~~] §95.57 of this title (relating to Level III Hearing Procedure) for proper procedures.

(2) See [~~(GAP)~~] §91.61 of this title (relating to Youth Employment and Work) for additional limitations.

(c) Explanation of Terms Used.

(1) (No change.)

(2) Restrictions - the consequence of limiting a youth's activity or privileges when such restriction is perceived by the youth as a negative consequence and therefore serves to deter repetition of the misbehavior pursuant to §87.4 of this title (relating to Resocialization Earned Privilege System).

(3) (No change.)

(d) Procedure. An on-site consequence will be imposed in accordance with [~~procedure in (GAP)~~] §95.57 of this title (relating to Level III Hearing Procedure).

(e)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505098
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.36

The Texas Youth Commission (the commission) proposes an amendment to §97.36, concerning Security and Control. The amendment to the section will add a reference to a new rule §87.4, which is proposed in this issue of the *Texas Register*.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be availability of accurate and up-to-date agency policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§97.36. Standard Security Unit Program Requirements.

(a) (No change.)

(b) Applicability. The provisions of this rule apply to the following rules, unless otherwise stated therein:

(1) - (4) (No change.)

(5) Protective Custody. See §97.45 of this title (relating to Protective Custody); and[.]

(6) (No change.)

(c) - (d) (No change.)

(e) Service Delivery Requirements. Segregation programs shall include, at a minimum, provision of the following:

(1) - (2) (No change.)

(3) privileges consistent with Resocialization phase 0; see §87.4 of this title (relating to Resocialization Earned Privilege System);

(4) [~~(3)~~] availability of at least five and one-half (5 ½) hours of academic services each weekday;

(5) [~~(4)~~] one hour each day of large muscle exercise (physical education) out of the room or in an enclosed outdoor recreation area, as the youth's behavior and weather permit, which may be counted toward the daily provision of academic services.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505099
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 424-6014

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER A. PRISON ADMISSIONS

37 TAC §152.1, §152.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Criminal Justice proposes the repeal of §152.1 and §152.6.

The purpose of the repeal is to create a blank slate for rewriting obsolete provisions governing the capacity of the Texas Department of Criminal Justice facilities, and to provide revised rules governing the Correctional Institutions Division in general.

Charles Marsh, Chief Financial Officer for TDCJ, has determined that the repeals do not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the rule, and that the public benefit expected as a result of the repeal is the replacement of obsolete provisions with updated, meaningful provisions governing capacity of TDCJ facilities. There will be no effect on small and micro businesses

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The repealed rules are proposed under Texas Government Code, §492.010.

Cross Reference to Statutes: Texas Government Code §492.010.

§152.1. Scheduled Admissions Policy.
§152.6. Transfer Facility Admissions and Transfers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505070
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-0422

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SUBCHAPTER A. MISSION AND ADMISSIONS

37 TAC §§152.1, 152.3, 152.5

The Texas Board of Criminal Justice proposes new §§152.1, 152.3, and 152.5.

The purpose of the new sections is to define the purpose of the Correctional Institutions Division and to consolidate previous rules regarding admissions and state jail regions.

Charles Marsh, Chief Financial Officer for TDCJ, has determined that for the first five years the new sections will be in effect, enforcing or administering the rules does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the rule and that the public benefit expected as a result of the new rules is the replacement of obsolete provisions with updated, meaningful provisions governing capacity of TDCJ units. There will be no effect on small and micro businesses.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rules are proposed under Texas Government Code, §§492.010, and 499.102 et seq.

Cross Reference to Statutes: Texas Government Code §499.102 et seq.

§152.1. Correctional Institutions Division.

The Correctional Institutions Division ("CI Division") is the division of the Texas Department of Criminal Justice ("TDCJ" or "Agency")

with operational responsibility for providing safe and appropriate confinement, supervision and rehabilitation of Texas adult felony offenders sentenced under Chapter 12, Texas Penal Code, or under Article 42.12, Texas Code of Criminal Procedure. The CI Division operates a variety of secure correctional facilities including prisons (institutional units), pre-release facilities, psychiatric facilities, medical facilities, substance abuse felony punishment treatment facilities, state jail felony facilities, transfer facilities and state boot camp programs. The CI Division also administers and monitors privately operated secure correctional facilities.

§152.3. Admissions.

(a) Counties shall send commitment papers on offenders sentenced to TDCJ to the TDCJ Records Office immediately following completion of the commitment papers. Those counties equipped to do so may send paperwork electronically.

(b) The 45 day "state ready" period begins the date the commitment papers are sent. If sent by mail, the 45 days begins on the postmarked date.

(c) Offenders will be scheduled for admission based on:

(1) their length of confinement in relation to the 45 days from paper-ready status; and

(2) transportation routes.

(d) Counties shall inform the TDCJ State Ready Office when paper-ready offenders are transferred to another facility due to bench warrants.

(e) TDCJ will notify counties via electronic transmission (facsimile or computer transmission) when applicable, of offenders scheduled for intake, the date of intake, respective reception unit and transportation arrangements. Offenders will be sorted by name and State Identification (SID) number, as identified by court docket.

(f) Counties shall in turn notify the TDCJ Admissions Coordinator of any offenders who are not available for transfer and why.

(g) Counties may identify offenders with medical or security issues that may be scheduled for intake out of sequence on a case-by-case basis by contacting the TDCJ Admissions Coordinator.

(h) After the entry of an order by a judge for admission of an offender to a state jail, the placement determination shall be made by the TDCJ Office of Admissions. Placement shall be made in the state jail designated as serving the county in which the offender resides unless:

(1) the offender has no residence or was a resident of another state at the time of committing an offense;

(2) alternative placement would protect the life or safety of any person;

(3) alternative placement would increase the likelihood of the offender's successful completion of confinement or supervision; or

(4) alternative placement is necessary to efficiently utilize available state jail capacity, including alternative placement due to gender.

(i) If the offender is described by subsection (h)(1) of this section, placement shall be made in the state jail designated as serving the county in which the offense was committed, unless a circumstance in subsection (h)(2)-(4) of this section applies.

(j) The TDCJ Admissions Office shall attempt to have placement determinations made at a regional level that may include one or more regions as designated in §152.5 of this title (relating to Designation of State Jail Regions).

§152.5. Designation of State Jail Regions.

(a) By law the Board may not designate a region that subdivides a geographical area served by a community supervision and corrections department. The Board may designate a region that contains only one judicial district if that district serves a municipality with a population of 400,000 or more. The Board considers the following factors to be of significance in ensuring that community supervision and corrections departments are served as efficiently as possible:

(1) the number and size of counties being served by the community supervision and corrections departments;

(2) geographic distances between counties;

(3) the need for state jail felony facility capacity as determined by the anticipated number of defendants who will be required by a judge to serve a term of confinement in a state jail.

(b) Based on these factors and any other factors deemed relevant by the Board, the Board designates a total of nine regions in the state for the purpose of providing regional state jail felony facilities. The following map shows the nine regions and the counties to be served in each region.

Figure: 37 TAC §152.5(b)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505067
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-0422

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SUBCHAPTER B. MAXIMUM SYSTEM CAPACITY OF THE CORRECTIONAL INSTITUTIONS DIVISION

37 TAC §§152.10 - 152.16

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Criminal Justice proposes the repeal of §§152.10 - 152.16.

The purpose of the repeal is to create a blank slate for rewriting obsolete provisions governing the capacity of the Texas Department of Criminal Justice facilities, and to provide revised rules governing the Correctional Institutions Division in general.

Charles Marsh, Chief Financial Officer for TDCJ, has determined that the repeals do not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the rule, and that the

public benefit expected as a result of the repeal is the replacement of obsolete provisions with updated, meaningful provisions governing capacity of TDCJ facilities. There will be no effect on small and micro businesses.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The repealed rules are proposed under Texas Government Code, §492.010.

Cross Reference to Statutes: Texas Government Code §492.010.

§152.10. Purpose.

§152.11. Definitions.

§152.12. Methodology for Changing Maximum Unit and System Population.

§152.13. April 2003 Additions to Capacity.

§152.14. November 2003 Addition to Capacity.

§152.15. April 2004 Additions to Capacity.

§152.16. July 2004 Additions to Capacity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. CORRECTIONAL CAPACITY

37 TAC §§152.21, 152.23, 152.25, 152.27, 152.29

The Texas Board of Criminal Justice proposes new §§152.21, 152.23, 152.25, 152.27 and 152.29.

The purpose of the proposed new sections is to replace obsolete provisions, establish the maximum capacity of individual units and systems of units, and describe constraints upon capacity determinations. Capacity determinations are no longer affected by Ruiz v. Johnson, Cause Number H-78-987, Southern District of Texas, Houston Division; that case was completely dismissed in June of 2002. This chapter is intended to provide guidance to corrections officials and to policymakers for the sound determination and management of correctional capacity. This chapter is not intended to create a liberty interest or grant a right on the part of an offender within the custody of TDCJ.

The limitation on System I capacity in §152.27(b) exists because cells in units built prior to 1985 are small in relation to modern generally-accepted correctional space standards. For the most part, the older cells are 45 square feet in size, and many such cells hold two offenders. Dayrooms were designed to accommodate adjacent cellblocks at single cell capacity, not double cell capacity. For the most part, the difference between the combined capacities of individual System I units, 43,627, and the standard for the capacity of System I, 42,210, is attributable to second beds in 45 square foot cells.

The limitation on System II capacity in §152.27(c) exists because cells in System II units are larger in size than in System I and built according to modern generally accepted space standards. However, flexibility for unit classification and inter-unit transfers is limited. The difference in the combined capacities of the individual System II units, 54,996, and the standard for System II capacity, 54,321, is necessary for classification flexibility.

There are no adjustments to System III capacity. System III capacity is the combined capacity for all state jails, transfer facilities, substance abuse felony punishment facilities, boot camps, pre-release centers, private prisons, mentally retarded offender facilities, leased beds and psychiatric facilities. The combined capacities of System III is 58,741.

Charles Marsh, Chief Financial Officer for TDCJ, has determined that for the first five years the new sections will be in effect, enforcing or administering the rules does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the rule, and that the public benefit expected as a result of the new rules is the replacement of obsolete provisions with updated, meaningful provisions governing capacity of TDCJ units. There will be no effect on small and micro businesses.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rules are proposed under Texas Government Code, §§492.010, and 499.102 et seq.

Cross Reference to Statutes: Texas Government Code §499.102 et seq.

§152.21. Purpose.

(a) Pursuant to Texas Government Code, §§499.102-499.110, the purpose of this chapter is to establish the maximum capacity of individual units and the systems of units, describe constraints on capacity and memorialize changes to capacity in a rulemaking format as required by law. Capacity determinations are no longer affected by Ruiz v. Johnson, Cause Number H-78-987, Southern District of Texas, Houston Division, which was dismissed in June of 2002. This chapter is intended to provide guidance to corrections officials and to policymakers for the sound determination and management of correctional capacity. This chapter is not intended to create a liberty interest or grant a right on the part of any offender within the custody of TDCJ.

(b) The CI Division may confine an offender in a transfer facility only if paperwork and processing required under Section 8(a), Article 42.09, Code of Criminal Procedure, for transfer of the offender to the division has been completed, and only during a period in which the offender would otherwise be confined in a county jail awaiting transfer to the division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision. (Government Code §499.152.)

(c) The CI Division may not confine an offender in a transfer facility for a period that exceeds two years, the maximum period for which a state jail felon may be confined in a state jail felony facility under Section 12.35, Penal Code. If an offender confined in a transfer facility is released from or transferred from the transfer facility or returned to the convicting county under court order, and is convicted of a subsequent offense, is returned from the convicting county, or is the subject of a revocation of parole or mandatory supervision, the CI division shall not calculate the previous period of confinement in determining the maximum period the defendant may be confined in a transfer facility following conviction of the subsequent offense, return from the convicting county, or revocation. (Government Code §499.155.)

(d) The CI Division may confine in a state jail felony facility defendants required by a judge to serve a term of confinement in a state jail felony facility following a grant of deferred adjudication for or conviction of an offense punishable as a state jail felony. (Government Code §507.002.)

(e) The CI Division, with the approval of the Board, may designate one or more state jail felony facilities or discrete areas within one or more state jail felony facilities to treat offenders who are eligible for confinement in a substance abuse felony punishment facility or to house offenders who are eligible for confinement in a transfer facility, but only if the designation does not deny placement in a state jail felony facility of defendants required to serve terms of confinement in a facility following conviction of state jail felonies. The division may not house in a state jail felony facility an offender who has a history of or has shown a pattern of violent or assaultive behavior in county jail or a facility operated by the department, or an offender who will increase the likelihood of harm to the public if housed in the facility (Government Code §507.006).

§152.23. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise.

(1) "Capacity" means the greatest density of offenders in relation to space available for offender housing that is in compliance with standards for prison population established herein by the Board or as established by staff pursuant to authority conferred by the Board.

(2) "De minimus increase in capacity" means the addition of two percent or fewer beds to the capacity of a unit as originally established by the Board, and that the addition will not increase the monthly gross payroll of the unit it is added to by $500,000 or more.

(3) "H.B. 124" means the statutory process for increases other than a "de minimus" increase to capacity pursuant to Texas Government Code, §§499.102-499.110, as enacted by H.B. 124, Acts 1991, 72nd Leg., ch. 655.

(4) "Maximum system population" means the total number of offenders who may be assigned to units under this chapter.

(5) "Maximum system capacity" means 100% of the maximum system population permissible under this chapter.

§152.25. Maximum Capacity of Individual Units.

The Texas Board of Criminal Justice establishes the following capacities for existing units.

Figure: 37 TAC §152.25

§152.27. Unit and System Capacity Standards.

(a) Unit Capacity General Standard. The number of offenders assigned to a unit shall not exceed the unit's capacity. The unit's capacity is established by the Texas Board of Criminal Justice.

(b) System I Capacity. The combined capacity of all prison units built prior to 1985 ("System I capacity") is 42,210.

(c) System II Capacity. The combined capacity of all prison units built after 1985 ("System II capacity") is 54,321. Of this figure, there are 374 transient beds in System II that are not included in the combined System I and System II capacities.

(d) System III Capacity. The combined capacity of all state jail felony, transfer, substance abuse felony punishment, mentally retarded offender, and psychiatric facilities and boot camps, pre-release centers, private prisons and leased beds is 58,741.

(e) Correctional Institutions Division ("CI Division") Operational Capacity Standard. In accordance with Government Code §§499.021 et seq. (the Population Management Act), TDCJ CI Division will operate at no higher than 100% of the combined capacities of TDCJ Systems I and II.

(f) TDCJ Operational Capacity Standard. TDCJ CI Division should operate at no higher than 97.5% of the combined capacity of Systems I, II, and III.

(g) Increases in Capacity. An increase in unit capacity, other than a de minimus increase, shall be made in accordance with Government Code §§499.102- 499.110.

(h) Statutory constraints on capacity.

(1) Temporary housing may not be considered for the purpose of computation of space available for offender housing. (Government Code §499.024.)

(2) The CI Division may not house offenders in tents, cellblock runs, hallways, laundry distribution rooms, converted dayroom space, gymnasiums, or any other facilities not specifically built for housing. Temporary housing may be used to house roving offender construction crews and offenders temporarily displaced only because of housing renovation, fire, natural disaster, riot or hostage situations, if the CI Division provides those offenders with reasonable sanitary hygiene facilities. (Government Code §501.111.)

(3) The CI Division may not house offenders with different custody classifications in the same cellblock or dormitory unless the structure of the cellblock or dormitory allows the physical separation of the different classifications of offenders. If an appropriate justification is provided by the unit classification committee or the state classification committee, the Board may permit the CI Division to temporarily house offenders with different custody classifications in the same cellblock or dormitory. The temporary housing shall only be used until sufficient beds become available to allow the Division to house the offenders by custody classification and in no event for more than 30 days. (Government Code §501.112.)

(4) The CI Division may not house more than two offenders in a cell designed for occupancy by one or two offenders. The following classes of offenders shall be housed in single occupancy cells:

(A) offenders confined in death row segregation;

(B) offenders confined in administrative segregation;

(C) offenders assessed a term of solitary confinement;

(D) offenders assessed as mentally retarded and whose habilitation plans recommend housing in a single occupancy cell;

(E) offenders with a diagnosed psychiatric illness being treated on an inpatient or outpatient basis whose individual treatment plans recommend housing in single occupancy cells; and

(F) offenders whose medical treatment plans recommend housing in a single occupancy cell. (Government Code §501.113)

§152.29. Standards for Functional Areas.

Increases to capacity shall satisfy the following criteria:

(1) Proper offender classification and housing within the unit that is consistent with the classification system.

(2) Housing flexibility to allow necessary repairs and routine and preventive maintenance to be performed without compromising the classification system;

(3) Adequate space in dayrooms;

(4) All meals within a reasonable time, allowing each offender a reasonable time within which to eat;

(5) Operable hygiene facilities that ensure the availability of a sufficient number of fixtures to serve the offender population;

(6) Adequate laundry services;

(7) Sufficient staff to:

(A) meet operational and security needs;

(B) meet health care needs, including the needs of offenders requiring psychiatric care, mentally retarded offenders and physically handicapped offenders;

(C) provide a safe environment for offenders and staff; and

(D) provide adequate internal review and investigative capability;

(8) Medical, dental, and psychiatric care adequate to ensure:

(A) minimal delays in delivery of service from the time sick call requests are made until the service is performed

(B) access to regional medical facilities;

(C) access to the CI Division hospitals or contract facilities performing the same services;

(D) access to specialty clinics; and

(E) a sufficient number of psychiatric inpatient beds and sheltered beds for mentally retarded offenders;

(9) A fair disciplinary system that ensures due process and is adequate to ensure safety and order in the unit.

(10) Work, vocational, academic, and on-the-job training programs that afford all eligible offenders with an opportunity to learn job skills or work habits that can be applied on release, appropriately staffed and of sufficient quality;

(11) A sufficient number and quality of nonprogrammatic and recreational activities for all eligible offenders who choose to participate;

(12) Adequate assistance from persons trained in the law or a law library with a collection containing necessary materials and space adequate for offenders to use the law library for study related to legal matters;

(13) Adequate space and staffing to permit contact and noncontact visitation of all eligible offenders;

(14) Adequate maintenance programs to repair and prevent breakdowns caused by increased use of facilities and fixtures; and

(15) Space and staff sufficient to provide all the services and facilities required by this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

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CHAPTER 153. INTERNAL INQUIRIES

SUBCHAPTER A. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION IN A FACILITY OPERATED BY THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

37 TAC §§153.1 - 153.7

The Texas Board of Criminal Justice proposes amendments to 37 TAC §§153.1 - 153.7. The amendments are necessary to make minor non-substantive changes to conform to existing organizational structure and law.

Charles Marsh, Chief Financial Officer for Texas Department of Criminal Justice, has determined that for the first five years the amendments will be in effect, enforcing or administering the amended rules do not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the amended rules. There will be no effect on small or micro businesses. The anticipated public benefit as a result of enforcing the amendments will be to enhance public safety.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Human Resources Code, Chapter 48, Investigations and Protective Services for Elderly and Disabled Persons.

Cross Reference to Statutes: Texas Human Resources Code, Chapter 48.

§153.1. Purpose.

The purpose of these sections is to provide for the authority to investigate [~~define~~] abuse, neglect or exploitation of an elderly or disabled offender [~~person~~] and describe procedures for reporting and investigating in accordance with the Human Resources Code, Chapter 48. These sections are not intended to supplant or interfere with:

(1) existing TDCJ policies and procedures that protect abused, neglected, or exploited elderly or disabled offenders [~~persons~~]; or

(2) (No change.)

§153.2. Application.

The provisions of this subchapter shall apply to the Texas Department of Criminal Justice's investigation of abuse, neglect or exploitation of an elderly or disabled offender [~~person~~] which occurs in any unit [~~facility~~] operated by or under contract with the Texas Department of Criminal Justice.

§153.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Agent--An individual not employed by a facility but working under the auspices of the facility, such as a volunteer, student, or consultant.~~]

(1) [~~(2)~~] Allegation--A report by a person believing or having knowledge that an elderly or disabled offender [~~person~~] has been or may be abused, neglected, or exploited in a unit [~~facility~~].

[~~(3) Caretaker--An owner, operator, manager, employee, or agent of a facility in which a patient or client is located.~~]

[~~(4) Client--A disabled person or elderly person receiving services in a facility.~~]

(2) [~~(5)~~] Clinical issues--Issues relating to unsafe practices [~~practice~~] by a licensed health care professional or a violation of a state law or rule relating to the licensure or practice of a licensed health care professional.

(3) [~~(6)~~] Confirmed--A finding that an allegation of abuse, neglect, or exploitation is supported by the preponderance of the evidence.

(4) [~~(7)~~] Department--The Texas Department of Criminal Justice.

(5) [~~(8)~~] Disabled offender [~~person~~]--An offender [~~A person~~] with a mental, physical, or developmental disability that substantially impairs the offender's [~~person's~~] ability to provide adequately for the offender's [~~person's~~] care or protection [~~and who is either 18 years of age or older or who is under 18 years of age and has the disabilities of minority removed~~].

(6) [~~(9)~~] Elderly offender [~~person~~]--An offender [~~A person~~] 65 years of age or older.

[~~(10) Facility--A facility which is operated by or under contract with the department. This term includes any owner, operator, manager, employee, or agent of a facility.~~]

(7) [~~(11)~~] Guardian--Anyone named as "guardian of the person" of an elderly offender [~~person~~] or disabled offender [~~person~~] by an order from a designated [~~a~~] probate court [~~order~~].

(8) [~~(12)~~] Inconclusive--A finding that an allegation of abuse, neglect, or exploitation leads to no conclusion or definite result due to a lack of witnesses or other relevant evidence.

(9) [~~(13)~~] Intimidation--The act of controlling another person with fear or by threats.

(10) [~~(14)~~] Non-serious physical injury--Any injury determined not to be serious by the examining physician. Examples of non-serious injury may include superficial laceration, contusion, or abrasion.

(11) [~~(15)~~] Observable and material impairment--Discernible and substantial damage or deterioration.

[~~(16) Patient--A disabled person or elderly person receiving health care services in a facility.~~]

(12) [~~(17)~~] Perpetrator--The person who has committed an act of abuse, neglect, or exploitation of an elderly or disabled offender [~~person~~].

(13) [~~(18)~~] Perpetrator unknown--The term used to describe an incidence in which abuse, neglect, or exploitation is confirmed but positive identification of the responsible person cannot be made and in which self injury has been eliminated as the cause.

(14) [~~(19)~~] Preponderance of evidence--Evidence which is of greater weight or more convincing than the evidence to the contrary; evidence which as a whole shows that the fact to be proved is more probable than not.

(15) [~~(20)~~] Reporter--The person filing a report of abuse, neglect, or exploitation; either the victim of alleged abuse, neglect, or exploitation or a third party filing a report on behalf of the alleged victim.

(16) [~~(21)~~] Serious physical injury--An injury determined to be serious by the examining physician. Examples of serious injury may include fracture; dislocation of any joint; internal injury; any contusion larger than two and one-half inches in diameter; concussion; second or third degree burns; first degree scald burns involving hands, feet, face, or genitals; or multiple lacerations, contusions or abrasions.

(17) [~~(22)~~] Sexual abuse--Any sexual activity, including any involuntary or non-consensual sexual conduct that would constitute an offense under the Penal Code, including §§21.08 (indecent exposure), 22.011 (sexual assault), or 22.021 (aggravated sexual assault), [~~or 39.03 (official oppression),~~] involving an employee [~~a caretaker~~] and an offender [~~a patient or client~~]. Sexual activity includes but is not limited to kissing, hugging, stroking, or fondling with intent to arouse or gratify the sexual desire of any person; oral sex or sexual intercourse; and a request, suggestion or encouragement for the performance of sex.

(18) [~~(23)~~] Unconfirmed--A finding that an allegation of abuse, neglect or exploitation is not supported by the preponderance of the evidence.

(19) [~~(24)~~] Unfounded--A finding that an allegation of abuse, neglect, or exploitation is spurious or patently without factual basis.

(20) Unit--A facility which is operated by or under contract with the department. This term includes any owner, operator, manager, employee, or agent of a facility.

(21) Volunteer--A person who performs services for or on behalf of the department and does not receive compensation for performing those services.

§153.4. Abuse, Neglect, and Exploitation Defined.

(a) Abuse of an elderly or disabled offender [~~person~~] means the [~~intentional, knowing, reckless, or~~] negligent or willful infliction of injury or intimidation with resulting physical or emotional harm or pain [~~or mental anguish~~], or sexual abuse, including an unnecessary or excessive use of force or the inappropriate use of restraints or seclusion.

(b) Abuse does not include:

(1) - (2) (No change.)

(3) actions an employee may reasonably believe to be immediately necessary to avoid imminent harm to self, offenders [~~patients or clients~~], or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances; or

(4) complaints related to the daily administrative operations of a unit [~~facility~~] (e.g., staffing ratios).

(c) Neglect of an elderly or disabled offender [~~person~~] means the failure by the employee [~~caretaker~~] to provide the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain.

(d) Exploitation of an elderly or disabled offender [~~person~~] means the illegal or improper act or process of an employee [~~a caretaker~~] who has an ongoing relationship with the elderly or disabled offender [~~person~~] using the resources of an elderly or disabled offender [~~person~~] for monetary or personal benefit, profit, or gain.

§153.5. Reports and Investigations.

(a) The department shall investigate allegations received relating to the abuse, neglect, or exploitation of an elderly or disabled offender [~~person~~] in a unit [~~facility~~].

(b) The department will only investigate reports when:

(1) the act is reported to have occurred in a unit [~~facility~~] and the victim was an offender [~~a patient or client~~] of the unit [~~facility~~];

(2) the act occurred away from the unit [~~facility~~] but the unit [~~facility~~] was responsible for the supervision of the offender [~~patient or client~~] who was the victim at the time the act allegedly occurred;

(3) the act is reported to have occurred in a unit [~~facility~~] and the alleged perpetrator was an employee or volunteer [~~a caretaker~~] of the unit [~~facility~~];

(4) the act occurred away from the unit [~~facility~~] but the unit [~~facility~~] was responsible for the supervision of the alleged perpetrator at the time the act occurred; or

(5) (No change.)

(c) The department shall review each allegation and determine whether it is appropriate for the department to investigate the allegation.

(1) If there is reason to suspect that the offender [~~patient or client~~] was abused, neglected, or exploited prior to admission to the department, the department shall refer the allegation to the Texas Department of Family and Protective [~~and Regulatory~~] Services.

(2) If the allegation involves the actions of a licensed health care professional, the department will determine whether the allegation involves clinical issues.

(A) (No change.)

(B) If the allegation involves clinical issues, the allegation shall immediately be forwarded to the state agency which licenses the health care professional involved. The identity of a person reporting abuse or neglect must be blacked out [~~or deidentified~~].

(3) The department need not investigate an allegation that clearly does not involve abuse, neglect or exploitation of an elderly or disabled offender [~~person~~] in a unit [~~facility~~]. The department may refer the reporter to other agencies for assistance.

(4) Injuries of unknown origin shall be investigated if the attending physician, after examining the offender [~~patient~~], suspects that the injury is the result of abuse or neglect.

(5) If an allegation involves the daily administrative operations of a unit [~~facility~~] and has not resulted in a specific case of abuse, neglect, or exploitation, such as the failure to maintain an adequate number of staff, the department need not investigate the matter under this section but may investigate the matter as a complaint investigation involving regulatory issues.

(d) Allegations which cannot be investigated by the department pursuant to the Human Resources Code, Chapter 48 shall be referred to the Texas Department of Family and Protective [~~and Regulatory~~] Services for appropriate investigation or action consistent with existing law.

(e) The department shall initiate [~~make~~] a thorough investigation 24 hours after receiving an allegation which has been reviewed and found appropriate to investigate.

(1) (No change.)

(2) If a report of serious physical injury or sexual abuse is received by the department from the Texas Department of Family and Protective [~~and Regulatory~~] Services or from another source, the investigation shall be conducted [~~jointly~~] by the Office of the Inspector General (OIG). At the conclusion of their investigation, if corroborating facts are obtained, the OIG will submit their findings to the Special Prison Prosecutor's Office or appropriate District Attorney for prosecution [~~Internal Affairs Division with appropriate local law enforcement coordination if possible~~]. The department shall document any instance in which a local law enforcement agency response is considered to be inadequate.

(f) (No change.)

(g) An allegation relating to an offender [~~a patient or client~~] who is in the unit [~~facility~~] where the act allegedly occurred at the time of the department's receipt of the allegation shall be given priority by the department in the scheduling of investigations. An allegation relating to an offender [~~a patient or client~~] who is no longer in the unit [~~facility~~] shall be given secondary priority.

(h) - (i) (No change.)

(j) If during the course of the investigation it becomes apparent that the an offender has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, a copy of the investigation shall be submitted to the appropriate law enforcement agency. [~~An investigation shall address the issues set forth in the Human Resources Code, §48.038(a), concerning elderly or disabled persons.~~]

(k) - (p) (No change.)

§153.6. Completion of Investigations [~~Investigation~~].

(a) After receiving an allegation that the department determines is appropriate for investigation, the department's investigator shall finish an investigation within:

(1) 14 days if the elderly or disabled offender [~~person~~] is in the unit [~~facility~~] at the time the department receives the allegation;

(2) - (3) (No change.)

(b) - (c) (No change.)

(d) The [~~If the investigation confirms abuse, neglect, or exploitation, the~~] written report of the completed investigation by the department shall be kept on file. [~~, along with the department's recommendations and related documents, shall be submitted to:~~]

[~~(1) the Texas Department of Protective and Regulatory Services if protective services are necessary and available; ~~]

[~~(2) the appropriate probate court if a guardian has been appointed for an elderly or disabled person; and ~~]

[~~(3) the appropriate state or local law enforcement agency if the report concerns abuse of an elderly or disabled person which could constitute a criminal offense under any law, including Penal Code, §22.04.~~]

(e) In cases of abuse, neglect, or exploitation by a licensed, certified, or registered health care professional, the department may

forward a copy of the completed investigative report to the state agency which licenses, certifies or registers the health care professional and the employer of the health care professional. Any information which might reveal the identity of the reporter or any other offender [~~patients or clients~~] of the unit [~~facility~~] must be blacked out [~~or deidentified~~].

(f) - (g) (No change.)

~~[(h) If the department receives a complaint about a department investigation of abuse, neglect, or exploitation in a facility, the department shall refer the complaint to the appropriate associate commissioner or office which oversees the investigations in that particular facility.]~~

§153.7. Confidentiality of Investigative Process and Report.

(a) The allegation and the reports, records, communications and working papers used or developed in the investigative process, including the resulting final report regarding abuse, neglect, or exploitation, are confidential and may be disclosed only as provided in the Human Resources Code, §48.101 and [~~§48.038(f) and (g) and~~] pursuant to the sections under this chapter.

(b) - (d) (No change.)

(e) The completed investigative report and related documents may be released to the victim or the victim's parent or guardian if the victim is a minor if there is no ongoing criminal investigation. Any information which might reveal the identity of the reporter, any other offenders [~~patients or clients~~] of the unit [~~facility~~] or any other person whose life or safety might be endangered by the disclosure must be blacked out [~~or deidentified~~].

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505078
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-0422

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CHAPTER 157. STATE JAIL FELONY FACILITIES

SUBCHAPTER A. ADMISSIONS AND ALLOCATIONS

37 TAC §§157.1, 157.3, 157.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Criminal Justice proposes the repeal of 37 TAC Chapter 157, Subchapter A, §§157.1, 157.3, and 157.4.

The purpose of the repeal is to remove from rule language the lengthy requirements that governed the inception of the state jail system (see Chapter 507, Texas Government Code, as enacted by Senate Bill 532, 1993), when both public and private state jails were under construction and newly opening. Provisions governing state jail regions and admissions are being transferred to 37 TAC Chapter 152.

Charles Marsh, Chief Financial Officer for Texas Department of Criminal Justice (TDCJ), has determined that the repeal does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the repeal as proposed, and that the public benefit expected as a result of the repeal is the replacement of obsolete provisions with updated, meaningful provisions governing capacity of TDCJ facilities. There will be no effect on small or micro businesses.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The repeal is proposed under Texas Government Code, §492.010.

Cross Reference to Statutes: Texas Government Code, §492.010.

§157.1. Definitions.

§157.3. Admissions to State Jails.

§157.4. Designation of Regions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

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Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-0422

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SUBCHAPTER B. OPERATIONAL STANDARDS

37 TAC §§157.21, 157.23, 157.25, 157.27, 157.29, 157.31, 157.33, 157.35, 157.37, 157.39, 157.41, 157.43, 157.45, 157.47, 157.49, 157.51, 157.53, 157.55, 157.57, 157.59, 157.61, 157.63

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Criminal Justice proposes the repeal of 37 TAC Chapter 157, Subchapter B, §§157.21, 157.23, 157.25, 157.27, 157.29, 157.31, 157.33, 157.35, 157.37, 157.39, 157.41, 157.43, 157.45, 157.47, 157.49, 157.51, 157.53, 157.55, 157.57, 157.59, 157.61, and 157.63.

The purpose of the repeal is to remove from rule language the lengthy requirements that governed the inception of the state jail system (see Chapter 507, Texas Government Code, as enacted by Senate Bill 532, 1993), when both public and private state jails were under construction and newly opening. Provisions governing state jail regions and admissions are being transferred to 37 TAC Chapter 152.

Charles Marsh, Chief Financial Officer for Texas Department of Criminal Justice (TDCJ), has determined that the repeal does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the repeal as proposed, and that the public benefit expected as a result of the repeal is the replacement of obsolete provisions with updated, meaningful provisions governing capacity of TDCJ facilities. There will be no effect on small or micro businesses.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The repeal is proposed under Texas Government Code, §492.010.

Cross Reference to Statutes: Texas Government Code, §492.010.

§157.21. Objectives.
§157.23. Administration, Management, and Operations.
§157.25. Personnel.
§157.27. Training and Staff Development.
§157.29. Eligibility for Placement.
§157.31. Use of Facility for Other Inmates.
§157.33. Security and Control.
§157.35. Rules and Discipline.
§157.37. Special Management and Protective Custody.
§157.39. Offender Rights.
§157.41. Institutional Services.
§157.43. Classification.
§157.45. Food Service.
§157.47. Sanitation and Hygiene.
§157.49. Health Care.
§157.51. Health Screenings and Examinations.
§157.53. Offender Programs.
§157.55. Mail, Telephone and Visitation.
§157.57. Library.
§157.59. Religious Programs.
§157.61. Information Systems and Research.
§157.63. Citizen Involvement and Volunteers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505075
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-0422

SUBCHAPTER C. PHYSICAL PLANT STANDARDS

37 TAC §§157.71, 157.73, 157.75, 157.77, 157.79, 157.81, 157.83, 157.85, 157.87, 157.89, 157.91, 157.93, 157.95, 157.97

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Criminal Justice proposes the repeal of 37 TAC Chapter 157, Subchapter C, §§157.71, 157.73, 157.75, 157.77, 157.79, 157.81, 157.83, 157.85, 157.87, 157.89, 157.91, 157.93, 157.95, and 157.97.

The purpose of the repeal is to remove from rule language the lengthy requirements that governed the inception of the state jail system (see Chapter 507, Texas Government Code, as enacted by Senate Bill 532, 1993), when both public and private state jails were under construction and newly opening. Provisions governing state jail regions and admissions are being transferred to 37 TAC Chapter 152.

Charles Marsh, Chief Financial Officer for Texas Department of Criminal Justice (TDCJ), has determined that the repeal does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the repeal as proposed, and that the public benefit expected as a result of the repeal is the replacement of obsolete provisions with updated, meaningful provisions governing capacity of TDCJ facilities. There will be no effect on small or micro businesses.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The repeal is proposed under Texas Government Code, §492.010.

Cross Reference to Statutes: Texas Government Code, §492.010.

§157.71. Physical Plant.

§157.73. Intent.

§157.75. Variance.

§157.77. Security.

§157.79. Design Latitude.

§157.81. Building and Safety.

§157.83. Size, Organization and Location.

§157.85. Site Design Requirements.

§157.87. Offender Housing.

§157.89. Environmental Conditions.

§157.91. Program and Service Facilities.

§157.93. Administrative and Staff Areas.

§157.95. Security.

§157.97. Construction Approval Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505076
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-0422

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CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.15

The Texas Board of Criminal Justice (TBCJ) proposes a new rule §159.15 concerning the GO KIDS (Giving Offenders' Kids Incentive and Direction to Succeed) initiative. The purpose of the rule is to notify the public about a new initiative in the Texas Department of Criminal Justice (TDCJ) for children of those persons under criminal justice supervision in Texas.

Charles Marsh, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the rule. There will be no affect on small and micro-businesses. The anticipated public benefit as a result of enforcing the rule will be to enhance public safety, assist children in developing a sense of personal safety, belonging, self-worth and responsibility, as well as support and guidance from caring adults, and to reduce future costs to the State of Texas through intervention with offenders' children.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The new rules are proposed under Texas Government Code, §492.013.

Cross Reference to Statutes: Texas Government Code §492.013.

§159.15. GO KIDS Initiative.

(a) The Texas Department of Criminal Justice (TDCJ) GO KIDS (Giving Offenders' Kids Incentive and Direction to Succeed) initiative identifies resources within the Agency and at the local, state and national levels to help the children of those persons under criminal justice supervision in Texas.

(b) A resource directory, identifying these programs and services, is available on the Agency website (www.tdcj.state.tx.us). In addition, direct links to selected GO KIDS collaborators are included.

(c) An Agency GO KIDS Coordinator is available to answer inquiries on the initiative. Inquiries should be addressed to the GO KIDS Coordinator, TDCJ Rehabilitation and Reentry Programs Division, P.O. Box 99, Huntsville, Texas 77342-0099.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505066
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-0422

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CHAPTER 195. PAROLE

37 TAC §195.61

The Texas Board of Criminal Justice proposes new §195.61, concerning the collection of parole supervision and other administrative fees from offenders released on parole or mandatory supervision. The purpose of the rule is to comply with Texas Government Code, §508.182 which requires the Texas Board of Criminal Justice (TDCJ) to adopt rules relating to the method of payment required of the releasee.

Charles Marsh, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will be no economic impact on persons required to comply with the rule. There will be no effect on small or micro businesses. The anticipated public benefit as a result of enforcing the rule will be to enhance public safety.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box

13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The new rule is proposed under Texas Government Code, §508.182.

Cross Reference to Statutes: Texas Government Code, §508.182

§195.61. Method of Payment for Parole Supervision and Administrative Fees.

The Parole Division shall collect all parole supervision and other administrative fees from offenders released on parole or mandatory supervision required to pay such fees. The method of payment required of such offenders shall be in the form of a money order or certified cashier's check payable to the Texas Department of Criminal Justice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505077
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 18, 2005
For further information, please call: (512) 463-0422

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.103, 81.111, 81.112, 81.115 - 81.117, 81.119 - 81.121, 81.123, 81.125 - 81.130, 81.134, 81.135

The Office of the Secretary of State adopts amendments to §§81.103, 81.111, 81.112, 81.115 - 81.117, 81.119 - 81.121, 81.123, 81.125 - 81.130, 81.134, and 81.135, concerning primary election funding. The amendment to §81.103 is adopted with a change to the text as proposed in the October 7, 2005, issue of the *Texas Register* (30 TexReg 6343). Sections 81.111, 81.112, 81.115 - 81.117, 81.119 - 81.121, 81.123, 81.125 - 81.130, 81.134, and 81.135 are adopted without changes to the text as proposed.

The amendments concern the financing of the 2006 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The amendments are necessary for the proper and efficient conduct of the 2006 primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

No written comments concerning the proposed amendments were received. However, public comment regarding the proposed amendment to §81.103(e) was received at the October 15, 2005, Election Law Seminar for County Chairs conducted by the Office of the Secretary of State. County chairs commented that the prohibition from keeping the primary bank account open between primaries was an administrative and financial burden. Accordingly, §81.103 is adopted with changes to omit subsection (e).

The amendments are adopted under the Election Code, §§31.003, 31.010, and 173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. In the 2003 Legislative Session the date of the local (county) canvass was modified to allow time for counting provisional ballots; however, the state canvassing date was not similarly modified. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

No other sections are affected by the amendments.

§81.103. Bank Account for Primary-Fund Deposits and Expenditures.

(a) The county chair shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds; any interest earned in such an account becomes part of the primary fund.

(b) The county chair, or any employee of the primary fund, shall not commingle primary funds with any other fund or account.

(c) Each check issued from a primary-funds account must include the following statement on its face: "VOID AFTER 60 DAYS."

(d) The county chair shall complete bank reconciliations on a monthly basis. Bank reconciliations are considered part of the primary-fund records and must be submitted to the Secretary of State with the final cost report.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505115
Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: November 27, 2005
Proposal publication date: October 7, 2005
For further information, please call: (512) 463-5650

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SUBCHAPTER G. JOINT PRIMARY ELECTIONS

1 TAC §§81.145, 81.148, 81.149, 81.152, 81.153, 81.157

The Office of the Secretary of State adopts amendments to §§81.145, 81.148, 81.149, 81.152, 81.153, and 81.157, concerning joint primary election funding, without changes to the text as proposed in the October 7, 2005, issue of the *Texas Register* (30 TexReg 6347).

The amendments concern the financing of the 2006 joint primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of joint

primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The amendments are necessary for the proper and efficient conduct of the 2006 joint primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

No written comments were received concerning the proposed amendments.

The amendments are adopted under the Texas Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Election Code that reduce the cost of the primary elections and facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

The amendments also are adopted under the Texas Election Code, §172.126(c) and (i) and §173.011(c) which provide the Office of the Secretary of State with the authority to prescribe procedures for appointment of election day workers, to ensure orderly and proper administration of as well as fair and efficient financing of joint primary elections.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by the amended rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505116
Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: November 27, 2005
Proposal publication date: October 7, 2005
For further information, please call: (512) 463-5650

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 33. TELEMEDICINE SERVICES

1 TAC §§354.1430, 354.1432, 354.1434

The Health and Human Service Commission (HHSC) adopts new rules for Telemedicine: §354.1430, Definitions; §354.1432, Benefits and Limitations; and §354.1434, Requirements for Providers. Section 354.1434 is adopted without changes to the proposed text as published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4891) and will be not be republished. Sections 354.1430 and 354.1432 are adopted with changes to the proposed text as published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4891). The text of the rule will be republished.

Section 354.1430, Definitions, defines the terms used within Division 33, Telemedicine Services. Section 354.1432 describes the telemedicine benefits and limitations covered through the Texas Medicaid Program and §354.1434, explains who will be reimbursed for delivering telemedicine services to Medicaid recipients and the requirements for telemedicine providers.

HHSC received one comment regarding the proposed rule during the comment period. The summarized comment is listed below followed by the response from HHSC.

Comment: HHSC received a comment from staff regarding an incorrect Telemedicine reimbursement remote site reference in the published proposed rule. The proposed §354.1432 (a)(3)(G) incorrectly listed "ICR-MR facility" and the correct reference is "ICF-MR facility".

Response: HHSC acknowledges the comment and agrees with the commenter. The rule has been revised to include the correction.

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§354.1430. Definitions.

Definitions. The following words and terms, when used in this chapter, have the following meanings.

(1) Hub Site--A hub site is the location where the consulting physician is physically located.

(2) Hub Site Provider--A hub site provider must be a:

(A) Physician at a rural health facility or an accredited medical or osteopathic school located in Texas, or a physician at one of the following entities affiliated through a written contract or agreement with a government agency, accredited medical, or osteopathic school located in Texas:

(B) Hospital;

(C) Teaching hospital;

(D) Tertiary center; or

(E) Health clinic.

(3) Remote Site--A remote site is where the Medicaid client is physically located.

(4) Remote Site Provider--A remote site provider is located in rural or medically underserved areas and is limited to the following provider types:

(A) Physician;

(B) Advanced practice nurse (APN);

(C) Certified nurse midwife (CNM);

(D) Hospital;

(E) Federally qualified health center (FQHC); or

(F) Rural health clinic (RHC).

(5) Rural area--A rural area is defined as a county with a population of 50,000 or less or a county that was not designated as a metropolitan area by the United States Bureau of the Census according to the most current federal census and does not have within the boundaries of the county a hospital, licensed under chapter 241, Health and Safety Code, with more than 100 beds.

(6) Rural Health Facility--A rural health facility is located in a rural county and is affiliated with an accredited medical school, teaching hospital, or government agency through a written contract or agreement.

(7) Telemedicine--Telemedicine is a method of health care service delivery used to facilitate medical consultations by a physician to health care providers in rural or underserved areas for purposes of patient diagnosis or treatment that requires advanced telecommunications technologies.

(8) Telepathology--Telepathology is the practice of pathology (consultation, education and research) using telecommunications to transmit data and images between two or more sites remotely located from each other.

(9) Teleradiology--Teleradiology is a means of electronically transmitting radiographic patient images and consultative text from one location to another.

(10) Underserved--An underserved area that meets the definition of Medically Underserved Area (MUA) or Medically Underserved Population (MUP) by the U.S. Department of Health and Human Services.

§354.1432. Benefits and Limitations.

(a) Telemedicine services are a health care benefit of the Texas Medicaid Program. Telemedicine services are described below.

(1) Telemedicine services are direct "face-to-face" interactive video communications with the client. Teleradiology and telepathology are exceptions to the direct face-to-face requirement.

(2) Telemedicine hub site providers may be reimbursed only for consultation or interpretation using interactive video as defined by Medicaid telemedicine medical policy and as currently reimbursed under the Texas Medicaid Program.

(3) Telemedicine remote sites may be reimbursed for services when any one of the following places of service are utilized and billed:

(A) Practitioner's office;

(B) Rural Health Clinic;

(C) Federally Qualified Health Clinic;

(D) Inpatient hospital;

(E) Outpatient hospital;

(F) Emergency room;

(G) ICF-MR facility.

(4) Telephone conversations, chart reviews, electronic mail messages and facsimile transmissions do not constitute a telemedicine interactive video consultation, and will not be reimbursed as telemedicine service.

(5) Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment, preventive health visits are not reimbursed if performed via telemedicine. Health care or treatment provided for conditions identified during these preventive health visits may be reimbursed if the health care is provided via telemedicine.

(6) Nursing facilities, skilled nursing facilities, and client homes are not approved places of service as remote sites for telemedicine services.

(b) Reimbursement for Services Performed Using Telemedicine.

(1) Providers seeking reimbursement for telemedicine services must provide and bill for the service in the manner prescribed by the Texas Medicaid Program.

(2) Telemedicine services are reimbursed in accordance with the existing Medicaid reimbursement methodology as defined in §355.7001 of this title (relating to Telemedicine Services Reimbursement).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505085
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 27, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.103

The Health and Human Services Commission (HHSC) adopts an amendment to §355.103, concerning Specifications for Allowable and Unallowable Costs without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4544) and will not be republished.

The amended rule will clarify that, for any individual eligible for Medicare Part D, the cost of any drug that is in a category that is covered by Medicare Part D is unallowable for Medicaid cost reporting purposes.

This amendment is being adopted to comply with the federal regulation at 42 CFR §423.906, General Payment Provisions, which states that Medical assistance (i.e., Medicaid) is not available to full-benefit dual eligible individuals (i.e., individuals eligible for both a Medicare drug benefit and Medicaid), including those not enrolled in a Part D plan, for covered Part D drugs, or any cost sharing obligations related to covered Part D drugs, effective January 1, 2006.

The rule at 1 TAC §355.103(b) is being amended to add paragraph (19), making unallowable the cost of any drug that is in a

category covered by Medicare Part D, for any individual eligible for Medicare Part D.

HHSC did not receive any comments regarding the proposed amendment during the comment period, which included a public hearing on August 17, 2005.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505081
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2006
Proposal publication date: August 12, 2005
For further information, please call: (512) 424-6900

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SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

The Health and Human Service Commission (HHSC) adopts the repeal and replacement of §355.7001, Telemedicine Services Reimbursement. The repeal is adopted without changes to the proposed text as published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4893) and will not be republished. The new rule is adopted with changes to the proposed text as published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4893). The text of the rule will be republished.

Section 355.7001 describes the Texas Medicaid reimbursement methodology for telemedicine services and which provider types are eligible for reimbursement. The rule was amended to remove telemedicine benefits information, which was transferred to another section of the Texas Administrative Code, and to clearly identify which types of providers may be reimbursed for telemedicine services.

HHSC received one comment regarding the proposed rule during the comment period. The summarized comment is listed below followed by the response from HHSC.

Comment: HHSC received a comment from staff regarding an incorrect Texas Administrative Code (TAC) reference in the published proposed rule. The proposed rule listed 1 TAC §355.8063 and the correct reference is §355.8061.

Response: HHSC acknowledges the comment and agrees with the commenter. The rule has been revised to include the correct TAC reference.

1 TAC §355.7001

The repeal is adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505084
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 27, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-6900

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1 TAC §355.7001

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.7001. Telemedicine Services Reimbursement.

Telemedicine services are reimbursed in accordance with the existing Medicaid reimbursement methodology for the applicable provider type as follows:

(1) physicians, 1 TAC §355.8085;

(2) advanced practice nurses (APNs), 1 TAC §355.8281;

(3) certified nurse midwives (CNMs), 1 TAC §355.8161;

(4) hospitals, 1 TAC §355.8061;

(5) federally qualified health centers (FQHCs), 1 TAC §355.8261; and

(6) rural health clinics (RHCs), 1 TAC §355.8101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 18, 2005.

TRD-200505083

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 27, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-6900

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SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Health and Human Service Commission (HHSC) adopts the amendment to §355.7103, concerning the reimbursement methodology for 24-hour residential child care, in its Reimbursement Rates chapter, without changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4771) and will not be republished.

The amended §355.7103 changes the rate determination authority from the Department of Family and Protective Services (DFPS) to HHSC and provides the method for determining payment rates effective September 1, 2005. The rule proposal outlines that the rates effective September 1, 2005 for the two years of the biennium will be determined by adjusting the current rates by equal percentages based on a prorata distribution of the appropriated funds. The rule proposal also documents the method used to determine the current rates in effect for state fiscal years 2004 and 2005 and makes changes in references to the Department of Protective and Regulatory Services (PRS) to references to DFPS. In addition, state fiscal year timeframes were added to provide an accurate reference to the rate determination actions taken in the past two biennium and the rate determination actions proposed for the next biennium.

HHSC did not receive any comments regarding the proposed rule during the comment period.

The amendment is adopted under the Texas Government Code, §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Government Code §531.0055, which authorizes the executive commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505082
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 27, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER R. FORMOSAN TERMITE QUARANTINE

4 TAC §§19.180 - 19.183

The Texas Department of Agriculture (the department) adopts new §§19.180 - 19.183 concerning a quarantine for the Formosan subterranean termite,*Coptotermes formosanus* Shiraki, without changes to the proposal published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6020). The quarantine is adopted to slow the spread of this pest in the State and reduce the spread of this termite due to manmade activities. The new sections prescribe specific restrictions on the movement of quarantined articles. In Texas, the Formosan subterranean termite was first detected in 1956 at a shipyard in Pasadena. According to the Texas A & M University, currently there are 23 counties in Texas that have been positively identified as having an infestation of the Formosan subterranean termite. Furthermore, infested railroad cross ties have been identified as the major pathway for the artificial spread of this pest. The department believes that by placing restrictions on the movement of quarantined articles from the infested counties of Texas and other states will delay the spread of this termite into free areas of Texas.

Section 19.180 defines the quarantined pest. Section 19.181 lists the Formosan subterranean termite-infested counties in Texas and other states. Section 19.182 describes the quarantined articles, and §19.183 prescribes requirements for movement of the quarantined articles from the quarantined area to a free area. The department believes that it is necessary to take this action to reduce spread of the Formosan subterranean termite into free areas of Texas.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2005.

TRD-200505012

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: November 22, 2005
Proposal publication date: September 23, 2005
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission adopts amendments to 16 TAC §401.305, relating to Lotto Texas on-line game rule without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5237).

The amendments provide that the jackpot amount paid is the greater of either the advertised jackpot or the jackpot based on sales determined, in part, by prevailing market rates. The amendments also clarify that the agency receives investment information from the Texas Treasury Safekeeping Trust Company and uses that information to calculate the interest factor. The interest factor is used in determining the advertised jackpot. The amendments also require the commission to develop internal procedures intended to ensure that advertised jackpots are based on a fair and reasonable projection of sales. The amendments clarify the definition of the term "net present cash value option". The amendments also clarify the amount actually paid, for the jackpot prize, as either a winner's share of the advertised jackpot or the winner's share of the jackpot based on sales determined, in part, by prevailing market rates. Additionally, the amendments provide that if insufficient funds exist to pay the advertised jackpot after using available funds from the direct prize category, indirect prize category and the Lotto Texas prize reserve fund, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355. The amendments also require the commission to place on its website information the commission uses to estimate the jackpot that is then advertised as well as information that the commission uses to determine the jackpot amount the commission pays.

By the commission paying the greater of either the advertised jackpot or the jackpot based on sales determined in part by the cost of securities, the players will know the jackpot amount, at a minimum, is the advertised jackpot. Additionally, in connection with the jackpot amount, players will know what funds are available to pay that amount. The commission believes that making available on the agency's website the information the commission uses to estimate the advertised jackpot and to calculate the jackpot amount the commission will pay benefits the public because the public will know what information is used in this process.

The Commission provided a 30 day comment period in which to receive comment regarding the proposed amendments. Written comments could be submitted to the Commission's General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, by facsimile, or via the agency's website online public comment form. No written comments were received. Additionally, the Commission conducted a comment hearing on September 9, 2005 to receive comment on the proposed amendments. No person appeared to provide comment.

The amendments are adopted under Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504980
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 20, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 344-5113

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.3

The Texas Higher Education Coordinating Board adopts an amendment to §4.3 concerning an excused absence from a public institution of higher education for a person called to active military service without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4595). Specifically, this amendment adds a definition for active military service, §4.3(17).

No comments were received regarding this amendment.

Texas Education Code, §51.9111, authorizes the Coordinating Board to adopt rules concerning excused absences for military service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2005.

TRD-200505030
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 22, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 427-6114

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19 TAC §4.9

The Texas Higher Education Coordinating Board adopts new §4.9 concerning an excused absence from a public institution of higher education for a person called to active military service with changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4596). Specifically, this new section provides a way for a student to be assured of an excused absence and a reasonable amount of time to complete missed assignments and examinations, in order to complete course work left pending if the student is called to active military duty for a brief duration of service. A student called to active military duty as defined in this section would still be able to withdraw from course work, but the new section would provide for a student who chooses not to do so under these specific circumstances.

The following comment was received regarding the new section:

Comment: Dallas County Community College District asked the Board to consider including a guideline for contact hours in addition to the number of class meetings that could be excused.

Response: As a result of this comment, §4.9(d) was changed to accommodate an equivalent proportion of contact hours.

Comment: Dallas County Community College District asked the Board to consider whether an institution could excuse an absence of less than 25% of the class meetings.

Response: As a result of this comment, no changes were made. The rules as originally written allow for an excused absence to be no more than 25% but may be less than 25% of the class meetings or contact hour equivalent.

Comment: Dallas County Community College District asked the Board to consider how the excused absence could be fairly applied to distance education courses.

Response: The Board agrees and §4.9(e) was modified to direct individual institutions to develop and publish policies and procedures regarding excused absences for distance learning, correspondence, self-paced, and other kinds of asynchronous classes, in order to allow for equivalent treatment of students who are enrolled in such courses.

Texas Education Code, §51.9111, authorizes the Coordinating Board to adopt rules concerning excused absences for military service.

§4.9. Excused Absence for a Person Called to Active Military Service.

(a) Upon notice from a student required to participate in active military service, an institution shall excuse a student from attending classes or engaging in other required activities, including examinations.

(b) A student shall not be penalized for an absence which is excused under this subsection and shall be allowed to complete an assignment or take an examination from which the student is excused within a reasonable time after the absence.

(c) Each institution shall adopt a policy under this subsection which includes:

(1) the retention of a student's course work completed during the portion of the course prior to the student being called to active military service;

(2) the course syllabus or other instructional plan, so that the student will be able to complete the course without prejudice and under the same course requirements that were in effect when the student enrolled in the course;

(3) a definition of a reasonable time after the absence for the completion of assignments and examinations;

(4) procedures for failure of a student to satisfactorily complete the assignment or examination within a reasonable time after the absence; and

(5) an institutional dispute resolution process regarding the policy.

(d) The maximum period for which a student may be excused under this section shall be no more than 25% (twenty-five percent) of the total number of class meetings or the contact hour equivalent (not including the final examination period) for the specific course or courses in which the student is currently enrolled at the beginning of the period of active military service.

(e) Institutions are directed to develop and publish policies and procedures to ensure that students enrolled in distance learning, self-paced, correspondence, and other asynchronous courses receive equivalent consideration for the purposes of determining acceptable duration of excused absences and time limits for the completion of course work following an excused absence under this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2005.

TRD-200505031
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 22, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 427-6114

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SUBCHAPTER G. EARLY COLLEGE HIGH SCHOOLS AND MIDDLE COLLEGES

19 TAC §4.152

The Texas Higher Education Coordinating Board adopts amendments to §4.152 concerning authority given to the Coordinating Board to make rules for Early College High Schools without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5467). Specifically, these amendments clarify the authority given to the Co-

ordinating Board to make rules concerning Early College High Schools.

There were no comments received regarding these amendments.

The amendments are adopted under the Texas Education Code, §§29.908, 61.076, 130.001(b)(3) - (4), 130.008, and 130.090 which provide the Board with the authority to regulate courses and programs offered by public institutions of higher education in cooperation with secondary schools.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505032
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: September 9, 2005
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §5.24

The Texas Higher Education Coordinating Board adopts amendments to §5.24 concerning criteria and approval of Mission Statements and Table of Programs, with changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4597). Specifically, the amendments will add eight criteria that the Coordinating Board will consider in granting preliminary authority for doctoral programs.

The following comments were received regarding the amendments:

Comment: Texas A&M International University suggested that the amendment in §5.24(b)(1) indicate that doctoral programs meet "regional" vocational needs in addition to state and national needs.

Response: The Board agrees and the word "regional" was added to §5.24(b)(1).

Comment: Texas A&M Kingsville expressed concern with the criterion for preliminary authority approval §5.24(b)(2) which states that "existing doctoral programs in the state cannot accommodate additional students, or that expanding existing programs . . . would not best serve the state." The institution stated that it would take years for all existing programs to become "saturated," and expanding existing programs would limit needed growth of doctoral programs in the southern part of the state. Texas A&M Kingsville also expressed concern that the existing statement was inconsistent with the Closing the Gaps Plan.

Response: While the issues raised by Texas A&M Kingsville are quite valid, the staff feel the phrase "or expanding existing programs would not best serve the state" takes into account the concerns identified by the institution. However, the Board agrees that additional clarification would be helpful; therefore, new language was added to §5.24(b)(2) indicating that expanding existing programs would not be viable if "accessibility to these programs is restricted."

Comment: Texas Tech University indicated approval of the proposed amendments.

Response: As a result of this comment, no changes were made to the proposed amendments.

Comment: Texas Woman's University (TWU) stated that comparing placement rates of doctoral graduates with peer institutions, as a criterion for approval stated in §5.24(b)(6), would place an undue burden on our institutions. TWU indicated Texas institutions would be "dependent on the good will of other institutions to share their placement data," which may or may not be reliable.

Response: The Board agrees and §5.24(b)(6) was changed to indicate that institutions should have satisfactory placement rates at their own institutions, with comparisons to peer group rates when available.

Comment: The University of Houston expressed support for the proposed amendments.

Response: As a result of this comment, no changes were made to the proposed amendments.

Comment: West Texas A&M University commented that the proposed amendments needed no changes.

Response: As a result of this comment, no changes were made to the proposed amendments.

The amendments are adopted under the Texas Education Code, §61.027 which provides the Coordinating Board with general rule-making authority, §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordinating for the Texas higher education system, and §61.051 which charges the Coordinating Board to review the table of programs of public institutions of higher education.

§5.24. Criteria and Approval of Mission Statements and Tables of Programs.

(a) In reviewing a request for preliminary authority to add a program to the institution's Table of Programs, the Board shall consider:

(1) a demonstrated need for a future program in terms of present and future vocational needs of the state and the nation,

(2) whether the proposed addition would complement and strengthen existing programs at the institution,

(3) whether a future program would unnecessarily duplicate other programs within the region, state, or nation, and

(4) whether a critical mass of students and faculty is likely to be available to allow the program to be offered at a high level of quality and to become self-sufficient on the basis of state funding.

(b) In reviewing a request for preliminary authority to add a doctoral program to the institution's Table of Programs, the Board shall

consider the criteria set out in subsection (a) of this section and the following additional criteria:

(1) a demonstrated regional, state, or national unmet need for doctoral graduates in the field, or an unmet need for a doctoral program with a unique approach to the field;

(2) evidence that existing doctoral programs in the state cannot accommodate additional students (or accessibility to these programs is restricted), or that expanding existing programs is not feasible or would not best serve the state;

(3) if appropriate to its mission, the institution has self-sustaining baccalaureate- and master's-level programs in the field and/or programs in related and supporting areas;

(4) the program has the potential to obtain state or national prominence and the institution has the demonstrable capacity, or is uniquely suited, to offer the program and achieve that targeted prominence;

(5) demonstrated current excellence of the institution's existing undergraduate and graduate degree programs and how this excellence shall be maintained with the development and addition of a high quality doctoral program; measures of excellence include the number of graduates and graduation rates that match or exceed those at peer institutions;

(6) satisfactory placement rates for graduates of the institution's current doctoral programs, with comparison to peer group placement rates when available;

(7) how the program will address Closing The Gaps by 2015; and

(8) institutional resources to develop and sustain a high-quality program.

(c) Review and Approval Process.

(1) As provided by Texas Education Code, §61.051(e), at least every four years the Board shall review the role and mission statements, the table of programs and all degree and certificate programs offered by each public senior university or health related institution. Requests for preliminary authority for new degree programs shall be presented as part of this review. The review shall include the participation of the institution's board of regents.

(2) The review process shall be determined by the Commissioner, but shall include a review of low-producing degree programs at the institution.

(3) The Board shall approve or re-approve the mission statement and table of programs of each institution following the review described in paragraph (1) of this subsection. Each institution shall be given an opportunity to be heard by the Board about these matters.

(4) Outside the normal review process described in paragraph (1) of this subsection, an institution may request of the Board an amendment to its authorized role and mission and/or preliminary authority for additional degree programs at any time the Commissioner determines that compelling circumstances warrant.

(5) After approval or re-approval, requests for new programs and administrative changes shall be considered in the context of the approved role and mission for the institution.

(6) The Commissioner may approve minor changes to the mission statement or table of programs of an institution during the period between the reviews referenced in paragraph (1) of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505033
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 22, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

The Texas Higher Education Coordinating Board adopts amendments to §13.1, concerning Definitions, with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5467).

Specifically, these amendments implement the changes required by Senate Bill 34, 79th Texas Legislature, Regular Session, amending Texas Education Code §54.0065, and provide other revisions to clarify existing text within the chapter. These amendments update definitions, limit eligibility for tuition rebates for students of Texas public institutions of higher education who receive baccalaureate degrees within the same period as equivalent to specific provisions for loan forgiveness under the Texas B-On-Time program in addition to current requirements, provide hardship provisions for otherwise eligible students, update references to other sections of the Board's rules, and clarify other text within the chapter.

Comment: A commenter pointed out that the name in paragraph (15)(C) should read "Commission on Colleges of the Southern Association of Colleges and Schools."

Response: The Board agreed and the name was corrected.

The amendments are adopted under the Texas Education Code, §54.0065 which gives the Coordinating Board the authority to adopt rules for the administration of tuition rebates for certain undergraduate students.

§13.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Auxiliary Enterprise--Activities providing a service to students, faculty, or staff for a fee directly related to, although not necessarily equal to, the cost of the service.

(2) Available University Fund (AUF)--A fund established in Article 7, §18, of the Texas Constitution to receive all interest and earnings of the Permanent University Fund and used to pay the debt service on PUF-backed bonds.

(3) Base Year--The semesters comprising the year of contact hours used for applying the formula funding distribution to the colleges and universities (usually the summer and fall of even years and the spring of odd years).

(4) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(5) Contact Hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(6) Current Operating Funds--Unrestricted (appropriated) funds, designated funds, restricted funds, and auxiliary enterprise funds.

(7) Developmental Coursework--Non-degree-credit courses designed to address a student's deficiencies.

(8) Developmental Education--Courses, tutorials, laboratories, or other efforts to bring student skills in reading, writing, and mathematics to entering college level. English as a Second Language (ESL) courses may be considered developmental education, but only when they are used to bring student skill levels in reading or writing to entering college level. The term as used in this chapter does not include courses in study skills or thinking skills.

(9) Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education.

(10) Functional categories--Instruction, research, public service, academic support, student service, institutional support, operation and maintenance of plant, and hospital as defined by NACUBO.

(11) General Academic Teaching Institution--Any college, university, or institution so classified in Chapter 61, Texas Education Code, or created and so classified by law.

(12) General Revenue (GR)--State tax revenue

(13) Governmental Accounting Standards Board (GASB)--An entity created by the Financial Accounting Foundation to set accounting standards for governmental entities including public institutions of higher education.

(14) Higher Education Assistance Fund (HEAF)--A fund established in Article 7, §17, of the Texas Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.

(15) Independent institution of higher education--A private or independent college or university that is:

(A) organized under the Texas Non-Profit Corporation Act;

(B) exempt from taxation under Article V, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and

(C) accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(16) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003.

(17) Institutional Expenditures--All costs of activities separately organized and operated in connection with instructional departments primarily for the purpose of giving professional training to students as a necessary part of the educational work of the related departments.

(18) Institutional Funds--Fees, gifts, grants, contracts, and patient revenue, not appropriated by the legislature.

(19) Local Funds--Tuition, certain fees, and other educational general revenue appropriated by the legislature.

(20) National Association of College and University Business Officers (NACUBO)--Provides guidance in business operations of higher education institutions.

(21) Non-Degree-Credit Developmental Courses--Courses intended for remedial or compensatory education that bear only institutional credit and are not counted toward the total for a degree or certificate program.

(22) Permanent University Fund (PUF)--A fund established in Article 7, §11, of the Texas Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

(23) Public Junior College, Public Technical Institute, Public State College, or Public Two-Year College--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003.

(24) Semester Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505045
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

SUBCHAPTER B. FORMULA FUNDING

19 TAC §13.25

The Texas Higher Education Coordinating Board adopts the repeal of §13.25 concerning formula funding exceptions, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5468). Specifically, the repeal of §13.25 would make it possible to incorporate these provisions in proposed new §§13.100 - 13.109.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, Texas Education Code §61.059(h) which requires the Board to distribute appropriated funds to institutions for the purposes described by law, and Texas Education Code, §51.3062(l), which limits the number of developmental education semester credit hours for which formula funding may be received.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 22, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 427-6114

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SUBCHAPTER E. TUITION REBATES FOR CERTAIN UNDERGRADUATES

19 TAC §§13.82, 13.83, 13.85, 13.86

The Texas Higher Education Coordinating Board adopts amendments to §§13.82, 13.83, 13.85, and 13.86 concerning Tuition Rebates for Certain Undergraduates. Sections 13.82, 13.83, and 13.85 are adopted with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5469). Section 13.86 is adopted without changes and will not be republished.

Specifically, these amendments implement the changes required by Senate Bill 34, 79th Texas Legislature, Regular Session, amending Texas Education Code §54.0065, and provide other revisions to clarify existing text within the chapter. These amendments update definitions, limit eligibility for tuition rebates for students of Texas public institutions of higher education who receive baccalaureate degrees within the same period as equivalent to specific provisions for loan forgiveness under the Texas B-On-Time program in addition to current requirements, provide hardship provisions for otherwise eligible students, update references to other sections of the Board's rules, and clarify other text within the chapter.

The following comments were received regarding the amendments:

Comment: Texas Tech University and Texas A&M University suggested that the tuition rebates be available for students who received baccalaureate degrees in four or five calendar years and who enroll for the first time in an institution on or after the effective date of Senate Bill 34, June 17, 2005. The limits should apply to those students enrolling for the first time in the fall 2005.

Response: The Board agreed with this comment and §13.82 was changed.

Comment: Texas A&M University commented that language in §13.83 is ambiguous about whether rebates must be awarded to students who have not graduated but can demonstrate a hardship for attendance during the timeframe required for a four- or five-year baccalaureate degree program.

Response: The staff agrees with the comment and has clarified the language in §13.83 concerning students who receive a baccalaureate degree outside the timeframe limitations and has moved the hardship policy requirement to §13.85(g) under Responsibilities of Institutions.

The amendments are adopted under the Texas Education Code, §54.0065 which gives the Coordinating Board the authority to adopt rules for the administration of tuition rebates for certain undergraduate students.

§13.82. Eligible Students.

To be eligible for a rebate under this program, a student must:

(1) have enrolled for the first time in an institution of higher education in the fall 1997 semester or later;

(2) request a rebate for coursework related to a first baccalaureate degree received from a general academic teaching institution;

(3) have been a resident of Texas as set forth under Chapter 21, Subchapter B of this title (relating to Determining Residence Status) and have been entitled to pay resident tuition at all times while pursuing the degree;

(4) if enrolled for the first time in fall 2005 or later, graduate within four calendar years for a four-year degree or within five calendar years for a five-year degree if the degree is in architecture, engineering, or any other program determined by the Board to require more than four years to complete; and

(5) have attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree under the catalog under which the student graduated. Hours attempted include transfer credits, course credit earned exclusively by examination (except that, for the purposes of this program, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted), courses dropped after the official census date, for-credit developmental courses, optional internship and cooperative education courses, and repeated courses. Courses dropped for reasons that are determined by the institution to be totally beyond the control of the student shall not be counted. For students concurrently earning a baccalaureate degree and a Texas teaching certificate, required teacher education courses shall not be counted to the extent that they are over and above the free electives allowed in the baccalaureate degree program.

§13.83. Hardship Provisions.

Effective for students who enroll for the first time in fall 2005 or later, an otherwise eligible student may be eligible for a tuition rebate without satisfying the requirements of §13.82(4) of this title (relating to Eligible Students), if the student is awarded a baccalaureate degree and the institution determines that the student has demonstrated a hardship under the policy required by §13.85(g) of this title (relating to Responsibilities of Institutions).

§13.85. Responsibilities of Institutions.

(a) Institutions of higher education shall include information regarding this program in the institution's catalog.

(b) If requested by potentially eligible students, institutions of higher education shall provide these students opportunities to enroll during each fall and spring semester in the equivalent of at least 12 semester credit hours that apply toward their degrees. Institutions are not required to provide students with the opportunity to enroll in specific courses or specific sections. Public two-year colleges will comply to the extent that courses for the current semester are being offered that apply to the student's baccalaureate degree program. The requirement may be met by allowing substitutions for required courses or by allowing concurrent enrollment in courses from another institution, so long as the courses are taught on the students' home campus and the students incur no financial penalty.

(c) General academic teaching institutions shall provide students with appropriate forms and instructions for requesting tuition reimbursement at the time that students apply for baccalaureate degrees.

(d) Institutions shall provide tuition rebates to students who apply within 60 days after graduation or provide the student with a statement explaining the reason the student is ineligible for the rebate.

(e) Institutions shall provide a dispute resolution process to resolve disputes related to local administration of the program.

(f) Disputes related to lower division credit transfer shall be resolved in accordance with Coordinating Board rules, §4.27 of this title (relating to Resolution of Transfer Disputes for Lower-Division Courses).

(g) Institutions shall establish policies and procedures for allowing otherwise eligible students to qualify for tuition rebates under this program, if the student receives a baccalaureate degree and demonstrates that the failure to comply with §13.82(4) of this title (relating to Eligible Students) was caused by a hardship condition. The policies and procedures shall include, but shall not be limited to, the following conditions:

(1) a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) performance of active duty military service.

(h) Institutions may adopt policies and procedures for administering the program. For example, institutions may require students to declare their intent to qualify for a tuition rebate early in their careers or register prior to the beginning of the semester.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2005.

TRD-200505046
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 22, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 427-6114

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SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGED FOR EXCESS CREDIT HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.100 - 13.106

The Texas Higher Education Coordinating Board adopts the repeal of §§13.100 - 13.106, concerning formula funding and tuition charged for excess credit hours of undergraduate students, without changes to the proposal as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5470).

Specifically, the repeal of these sections will make it possible to restructure the board rules concerning formula funding and tuition for excess credit hours of undergraduate students and new sections of Board rules are being adopted.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, Texas Education Code, §61.059(h) which requires the Board to distribute appropriated funds to institutions for the purposes described by law, and Texas Education Code §61.0595, which excludes funding for certain repeated or excessive hours.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.100 - 13.109

The Texas Higher Education Coordinating Board adopts new §§13.100 - 13.109, concerning formula funding and tuition charged for repeated and excess hours of undergraduate students, with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5471). Specifically, adopted new §13.100 and §13.101 provide the purpose and authority for these rules. Definitions for all the terms used in these sections are provided in proposed new §13.102. Institutions are not permitted to submit excess hours to the Board for formula funding under §13.103, unless those hours are exempted from this provision under §13.104. Likewise, institutions are not permitted to submit repeated hours for attempted courses to the Board for formula funding under §13.105, unless those hours are exempted under §13.106. Hours for remedial and developmental courses which exceed the limits set out in §13.107 may not be submitted for formula funding, also. New §13.108 provides that a higher tuition rate may be charged to students who take excess hours or certain repeated courses by the institutions but, if a higher tuition rate is charged, institutions must adopt a policy which exempts a student from the payment of the increased tuition rate upon the showing of an economic hardship to the student. Finally, new §13.109 requires the institutions to provide reports to the Board and to publish information about excess and repeated hours in their catalogs. Institutions are also required to track the progress of students and notify those students who are approaching the limitations on formula funding set out in these sections.

The following comments were received regarding the new sections:

Comment: Texarkana College, The University of Texas System and Texas Tech University commented that there was an error in the wording of §13.105 and §13.102(6). The word "three" should be replaced with "two."

Response: §13.105 and 13.102(6) have been corrected to replace "three" with "two."

Comment: Texas A&M - Galveston commented that not making a high enough grade to satisfactorily meet a degree requirement should constitute "good cause" to exempt the student from higher tuition.

Response: §13.108(d) has been changed to reflect this comment.

Comment: Texarkana College also commented that the term "economic hardship" is not clearly defined in §13.108(c).

Response: No change was made to §13.108(c) because each institution is required to determine what constitutes economic hardship under their policies.

Comment: Texas Tech University commented that the definition of excess hour in §13.102(3) should be clarified to specify that the provision applies only to those students paying resident undergraduate tuition.

Response: §13.102(3) has been added to refer to resident undergraduate students and non-resident students paying resident undergraduate tuition.

Comment: Texas Tech University commented that the definition of a student in §13.102(8) should be changed to exclude the reference to a nonresident student paying resident tuition.

Response: No change was made to §13.102(8) since the definition of excess hours has been changed to clarify its applicability.

Comment: The University of Texas System commented that §13.109(a) be changed to provide that institutions that do not charge higher tuition rates for hours not eligible for formula funding be exempted from the reporting and publishing requirements.

Response: No change was made as a result of this comment.

The new sections are adopted under Texas Education Code, §61.027, which provides the Board with the authority to adopt rules, Texas Education Code, §54.068, which permits the institutions to charge a higher rate of tuition to students who enroll in excess or repeated hours, Texas Education Code, §61.059(h), which requires the Board to distribute appropriated funds for the purposes as described by law, Texas Education Code, §51.3062(l), which limits the number of hours for remedial and developmental courses that are eligible for formula funding, and Texas Education Code, §61.0595, which limits formula funding for certain excess or repeated hours.

§13.100. Purpose.

This subchapter provides financial incentives for institutions to facilitate the progress of students through their academic programs and incentives for students to complete their degree programs expeditiously. Rules contained in this subchapter clarify the enabling legislation, define responsibilities of institutions and the Board in implementing the statute, and ensure that students are adequately informed.

§13.101. Authority.

Texas Education Code, §54.068, provides that institutions may charge a higher rate of tuition to students with repeated or excess hours. Texas Education Code, §61.0595, limits formula funding for excess hours. SB 1, General Appropriations Act, 79th Legislature, Regular Session, III-251, §49, limits formula funding for a course for which a student would generate formula funding for the third time. Texas Education Code, §51.3062(l) limits the number of remedial or developmental education semester credit hours for which formula funding may be received.

§13.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Degree Plan--academic program of courses and their related hours culminating in a degree or certificate, including minors, double majors, and completion of any other special program in which the student is also enrolled, such as a program with a study abroad component.

(2) Dual Credit Hours--hours for which a student received simultaneous academic credit for the course from both an institution and a high school under §§4.81 - 4.85 of this title (relating to Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges).

(3) Excess Hours--effective with students initially enrolling in the fall 1999 semester and subsequent terms, hours, including dual credit hours, attempted by a resident undergraduate student that exceed more than 45 hours of the number of hours required for completion of the degree plan in which the student is enrolled. Effective with students initially enrolling in the fall 2006 semester and subsequent terms, hours, including dual credit hours, attempted by a resident undergraduate student that exceed more than 30 hours of the number of hours required for completion of the degree program in which the student is enrolled. For purposes of excess hours, resident undergraduate student includes a nonresident student who is permitted to pay resident tuition.

(4) Hours--quarter credit hours or semester credit hours.

(5) Remedial and Developmental Courses--courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college. The term includes English as a Second Language (ESL) courses in which a student is placed as a result of failing the reading or writing portion of a test required by §4.56 of this title (relating to Assessment Instruments).

(6) Repeated Hours for Attempted Course--hours for a course that is the same or substantially similar to a course that the student previously attempted for two or more times at the same institution. Previously attempted courses from which the student withdraws before the official census date shall not count as an attempted course.

(7) Repeated Hours for Completed Course--hours for a course in which a student enrolls for two or more times that is the same as or substantially similar to a course that the student previously completed and received a grade of A, B, C, D, F, or Pass/Fail at the same institution.

(8) Student--for the purposes of this subchapter, a student who has not been awarded a bachelor's degree or the equivalent.

(9) Workforce Education Courses--courses offered by two-year institutions for the primary purpose of preparing students to enter the workforce rather than academic transfer. The term includes both technical courses and continuing education courses.

§13.103. Limitation on Formula Funding for Excess Hours.

(a) Institutions shall not submit excess hours to the Board for the purposes of formula funding, unless those hours are exempt under the provisions of §13.104 of this title (relating to Excessive Hour Exemptions)

(b) For the purposes of determining the number of hours required for a degree plan, institutions shall utilize the degree plan designated by the student as of the official census day of the term.

(1) If a student at a four-year institution is not enrolled in a degree program, institutions shall consider the student to be enrolled in a degree program requiring a minimum of 120 hours.

(2) If a student is enrolled on a temporary basis in a university or health-related institution and is also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education, institutions shall consider the student to be enrolled in a degree program requiring a minimum of 120 hours.

(c) Institutions shall not consider any hours for which a student has enrolled as part of a master's or professional degree program without first completing a bachelor's degree in the calculation of the number of hours required for a bachelor's degree or the equivalent until the student has completed a minimum of 120 hours required for the bachelor's degree or equivalent.

§13.104. Exemptions for Excess Hours.

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours):

(1) hours earned by the student before receiving a bachelor's degree that has been previously awarded to the student;

(2) hours earned through examination or similar method without registering for a course;

(3) hours from remedial and developmental courses, workforce education courses, or other courses that would not generate academic credit that could be applied to a degree at the institution if the course work is within the 27-hour limit at two-year colleges and the 18-hour limit at general academic institutions;

(4) hours earned by the student at a private institution or an out-of-state institution; and

(5) hours not eligible for formula funding.

§13.105. Limitation on Formula Funding for Repeated Hours for Attempted Courses.

Institutions shall not submit for formula funding any hours for a course that is the same or substantially similar to a course that the student previously attempted for two or more times at the same institution.

§13.106. Exemptions for Repeated Hours for Attempted Courses.

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.105 of this title (relating to Limitation on Formula Funding for Repeated Hours for Attempted Course).

(1) hours for remedial and development courses, if the course work is within the 27-hour limit at two-year colleges and the 18-hour limit at general academic institutions;

(2) hours for special topics and seminar courses;

(3) hours for courses that involve different or more advanced content each time they are taken, including but not limited to, individual music lessons, Workforce Education Courses, Manual Special Topics courses (when the topic changes), theater practicum, music performance, ensembles, certain physical education and kinesiology courses, and studio art;

(4) hours for independent study courses; and

(5) hours for continuing education courses that must be repeated to retain professional certification.

§13.107. Limitation on Formula Funding for Remedial and Developmental Courses.

Institutions shall not submit for formula funding any hours for remedial and development courses for which a student has exceeded 18 hours of remedial and developmental courses in a general academic teaching institution, or 27 hours of remedial and developmental courses in a public community college, public technical college, or public state college.

§13.108. Tuition Rate for Students.

(a) An institution may charge a higher tuition rate, not to exceed the rate charged to nonresident undergraduate students, to a student whose hours can no longer be submitted for formula funding under §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours), unless those hours are exempted under §13.104 of this title (relating to Exemptions for Excess Hours).

(b) Unless the hours are exempted under §13.106 of this title (relating to Exemptions for Repeated Hours for Attempted Courses), an institution may charge a higher tuition rate, not to exceed the rate charged to nonresident undergraduate students, to a student who enrolls for the second time in a completed course, even though those hours may be submitted for formula funding, or to a student whose hours may no longer be submitted for formula funding under §13.105 of this title (relating to Limitation on Formula Funding for Repeated Hours for Attempted Course).

(c) If an institution charges a higher tuition rate under this section, it shall adopt a policy under which a student is exempted from the payment of that higher tuition rate, if the payment of the higher tuition rate would result in an economic hardship for the student.

(d) A student shall be exempted from payment of higher tuition if the student enrolls in repeated hours for a completed course for the purpose of receiving a grade that will satisfy a degree requirement.

§13.109. Additional Responsibilities of Institutions.

(a) Institutions shall report to the Board all information required to comply with the provisions of this subchapter. Based upon this information, the Coordinating Board shall maintain a database containing information regarding the number of hours a student has accumulated.

(b) Each institution shall publish information in the catalog about the limitations on hours set out in this subchapter and the tuition rate that will be charged to affected students. Until this material is included in its catalog, the institution shall inform each new undergraduate student enrolling at the institution in writing of the limitations on formula funding and the tuition rate that will be charged to affected students.

(c) Institutions shall track the progress of students and shall identify and assist those students who are approaching the limitations on formula funding.

(d) Community and technical colleges and the Lamar State Colleges shall inform each student of the individual's progress toward the limitations on formula funding and shall disclose the institution's tuition policy for students who exceed the limitations when the student has accumulated 70 or more hours.

(e) Universities and health-related institutions shall inform each student of the individual's progress toward the limitations on formula funding and shall disclose the institution's tuition policy for students who exceed the limitations when the student has accumulated 120 or more hours toward the limit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 17. CAMPUS PLANNING
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board adopts amendments to §17.3, concerning Campus Planning, with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5474).

Specifically, these amendments provide new definitions to reflect the Board's new committee structure and Coordinating Board organizational changes. The definitions are renumbered.

The following comments were received regarding the amendments:

Comments: Texas Tech University commented that the second appearance of either the word "Strategic" or "Campus" in new paragraph (19) under Definitions needed to be struck through.

Response: The Board agrees and the word "Campus" has been struck through where it appeared the second time in new paragraph (19) under Definitions.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

§17.3. Definitions.
The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acquisition--To come into possession or control of real property or facilities. This includes the acceptance, purchase, lease-purchase, transfer, or exchange of land or facilities.

(2) Academic Facilities--Facilities used for primary instruction, research, and public service functions of the institution. Academic facilities typically would include classrooms, libraries, administrative and faculty offices, and student and research laboratories.

(3) Addition--Expansion or extension of an existing facility that increases its size or capacity.

(4) Assignable Area of a Building--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned space. This is also referred to as net assignable square feet (NASF).

(5) Assistant Commissioner--The executive officer having direct oversight of the campus facilities planning function at the Texas Higher Education Coordinating Board.

(6) Associate Commissioner--An executive officer having indirect oversight of the campus facilities planning function at the Texas Higher Education Coordinating Board.

(7) Athletic Facilities--Facilities used for athletic programs, including intercollegiate athletics, intramural athletics, and athletically-oriented academic programs.

(8) Auditorium or Assembly--A room, hall, or building designed and equipped for the assembly of large groups for such events as dramatic and musical productions, devotional activities, livestock judging, faculty/staff meetings, or commencement. Included are theaters, concert halls, arenas, chapels and livestock judging pavilions. Assembly facilities may also serve instructional purposes to a minor or incidental extent.

(9) Auxiliary Enterprise Buildings or Space--Income-generating structures and space such as dormitories, cafeterias, student union buildings, stadiums, athletic facilities, housing or boarding facilities used by a fraternity, sorority, or private club, and alumni centers used solely for those purposes. Auxiliary space is not supported by State appropriations.

(10) Board or Coordinating Board--The Texas Higher Education Coordinating Board members and the agency.

(11) Building--A structure with at least two walls for permanent or temporary shelter of persons, animals (excluding animal caging equipment), plants, materials, or equipment that is attached to a foundation, roofed, serviced by a utility (exclusive of lighting), is a source of maintenance and repair activities, and is under the control or jurisdiction of the institution's governing board, regardless of its location.

(12) Campus Deferred Maintenance Plan (MP2)--A detailed report of institutional programs to address deferred maintenance and critical deferred maintenance.

(13) Campus Master Plan--A detailed long-range plan of institutional physical plant needs, including facilities construction and/or development, land acquisitions, and campus facilities infrastructure; the plan provides long-range and strategic analyses and facilities development guidelines.

(14) Capital Renewal--Includes capital improvements and changes to a facility in response to evolving needs. The changes may occur because of new programs or to correct functional obsolescence. Capital renewal needs are not part of the deferred maintenance backlog.

(15) Certification--Institutional attestation of reports or other submissions as being true or as represented.

(16) Classroom--A room used for scheduled classes. These rooms may be called lecture rooms, lecture-demonstration rooms, seminar rooms, or general purpose classrooms. A classroom may contain multimedia or telecommunications equipment, such as those used for distance learning. A classroom may be furnished with special equipment (e.g., globes, maps, pianos) appropriate to a specific area of study. A classroom does not include conference rooms, meeting rooms, auditoriums, or class laboratories.

(17) Class Laboratory--A room used primarily by regularly scheduled classes that require special-purpose equipment for student participation, experimentation, observation, or practice in a field of study. Class laboratories may be referred to as teaching laboratories, instructional shops, computer laboratories, drafting rooms, band rooms, choral rooms, group studios. Laboratories that serve as individual or independent study rooms are not included.

(18) Clinical Facility--A facility often associated with a hospital or medical school that is devoted to the diagnosis and care of patients in the instruction of health professions and allied health professions; medical instruction may be conducted, and patients may be examined and discussed. Clinical facilities include, but are not

limited to, patient examination rooms, testing rooms, and consultation rooms.

(19) Committee or Committee on Strategic Planning--The members of the Board appointed to consider facility-related issues. This includes the Committee on Strategic Planning and its successors.

(20) Commissioner--The chief executive officer of the Texas Higher Education Coordinating Board.

(21) Critical Deferred Maintenance--The physical conditions of a building or facility that places its occupants at risk of harm or the facility at risk of not fulfilling its functions.

(22) Deferred Maintenance--An existing or imminent building maintenance-related deficiency from prior years that needs to be corrected, or scheduled preventive maintenance tasks that were not performed because other tasks funded within the budget were perceived to have higher priority status. The accumulation of facility components in need of repair brought about by age, use, or damage for which remedies are postponed or considered backlogged. This may include those repairs postponed due to insufficient funding.

(23) Diagnostic Support Laboratory--the central diagnostic service area for a health care facility. Included are pathology laboratories, pharmacy laboratories, autopsy rooms, isotope rooms, etc., providing such services as hematology, tissue chemistry, bacteriology, serology, blood banks, and basal metabolism. In veterinary facilities, this includes necropsy rooms.

(24) Education and General (E&G)--Space used for teaching, research, or the preservation of knowledge, including the proportional share used for those activities in any building or facility used jointly with auxiliary enterprise, or space that is permanently unassigned. E&G space is supported by state appropriations.

(25) Emergency--An unforeseen combination of circumstances that calls for immediate action and requires an urgent need for assistance or relief that, if not taken, would result in an unacceptable cost to the state; or, an urgent need for assistance or relief due to a natural disaster; or an unavoidable circumstance whereby the delay of the project approval would critically impair the institution's function.

(26) Eminent Domain--A legal process wherein the institution takes private property for public use.

(27) Energy Systems--Infrastructure in a building that includes facility electric, gas, heating, ventilation, air conditioning, and water systems.

(28) Energy Savings Performance Contract--A contract for energy or water conservation measures to reduce energy or water consumption or operating costs of institutional facilities in which the estimated savings in utility costs resulting from the conservation measures is guaranteed to offset the cost of the measures over a specified period.

(29) Facilities Audit--Comprehensive review of institutional facility development, planning activities, and reports.

(30) Facilities Inventory--A collection of building and room records that reflects institutional space and how it is being used. The records contain codes that are uniformly defined by the Board and the United States Department of Education and reported by the institutions on an ongoing basis to reflect a current facilities inventory. The facilities inventory includes a record of property owned by or under the control of the institution.

(31) Facilities Development Plan (MP1)--A detailed formulation of institutional programs to address deferred maintenance, critical deferred maintenance, facilities construction, demolition, property acquisitions, or physical plant development.

(32) Financing Directly Derived from Students--Funds resulting from the collection of fees or other charges to students, such as designated tuition, student activities fees, housing revenue, bookstore or student union revenue, etc. Bond proceeds for which one or more of these sources provides debt service shall also be considered financing directly derived from students.

(33) Financing Indirectly Derived from Students--Funds generated from funds accumulated from students, primarily interest on funds accumulated directly from students.

(34) Gift--A donation or bequest of money or another tangible item, a pledge of a contribution, or the acquisition of real property or facilities at no cost to the state or to the institution. It may also represent a method of finance for a project.

(35) Gross Square Feet (GSF)--The sum of all square feet of floor areas within the outside faces of a building's exterior walls. This includes the areas, finished and unfinished, on all floors of an enclosed structure, i.e., within the environmentally controlled envelope, for all stories or areas which have floor surfaces.

(36) Housing Facility--A single- or multi-family residence used exclusively for housing or boarding students, faculty, or staff members.

(37) Information Resource Project--Projects related to the purchase or lease-purchase of computer equipment, purchase of computer software, purchase or lease-purchase of telephones, telephone systems, and other telecommunications and video-teleconferencing equipment.

(38) Intercollegiate Athletic Facility--Any facility used primarily to support intercollegiate athletics, including stadiums, arenas, multi-purpose centers, playing fields, locker rooms, coaches' offices, and similar facilities.

(39) Infrastructure--The underlying foundation or basic framework of a facility, including but not limited to, the utility distribution system of plumbing, heating/ventilation/air conditioning, electrical, sewage, drainage, architectural, safety and Code compliance, roads, grounds, and landscaping.

(40) Institution or institution of higher education--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8), except a community/junior college.

(41) Legislative Authority--Specific statutory authorization.

(42) Lease--A contract by which real estate, equipment, or facilities are conveyed for a specified term and for a specified rent. Includes the transfer of the right to possession and use of goods for a term in return for consideration. Unless the context clearly indicates otherwise, the term includes a sublease.

(43) Lease-Purchase--A lease project that includes the acquisition of real property by sale, mortgage, security interest, pledge, gift, or any other voluntary transaction at some future time.

(44) Net Assignable Square Feet (NASF)--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned areas. NASF includes auxiliary space and E&G space.

(45) New Construction--The creation of a new building or facility, the addition to an existing building or facility, or new infrastructure that does not currently exist on campus. New construction would add gross square footage to an institution's existing space.

(46) Non-student Sources--Funds generated from athletic department operations, gifts and grants, facility usage fees, related revenue, and appropriated funds.

(47) NCAA Football Bowl Championship Series--A program of the NCAA under which certain NCAA Division I-A football universities share proceeds of college bowl games.

(48) Parking Structure--A facility or garage used for housing or storing vehicles. Included are garages, boathouses, airport hangars, and similar buildings. Barns or similar field buildings that house farm implements and surface parking lots are not included.

(49) Phased Project--A project that has more than one part, each one having fixed beginning and ending dates, specified cost estimates, and scope. Phased projects consider future phase needs in the project plan; each phase is able to stand alone as an individual project.

(50) Private Funding--Gifts, grants, or other funds to be used for facilities development projects that are provided by persons or entities other than the university or institution requesting consideration of the project.

(51) Project--The process that includes the construction, repair, renovation, addition, alteration of a campus, building, or facility, or its infrastructure, or the acquisition of real property.

(52) Real Property--Land with or without improvements such as buildings.

(53) Repair and Renovation (R&R)--Construction upgrades to an existing building, facility, or infrastructure that currently exists on campus; this includes the finish-out of shell space. R&R may add E&G NASF space.

(54) Replacement Value--The value of an institution's overall campus facilities, as determined annually by the Board. The method of calculation is based upon recently approved Board project costs, with adjustments based upon room types and the institution's location within the state. Replacement values for public universities, the Lamar State Colleges, and the Texas State Technical Colleges are calculated only for E&G space. Replacement values for public health-related institutions are calculated for the NASF space. Replacement values are used to measure the validity of construction projects that are submitted to the Board for approval and are not recommended for insurance purposes.

(55) Research Facility--A facility used primarily for experimentation, investigation, or training in research methods, professional research and observation, or a structured creative activity within a specific program. Included are laboratories used for experiments or testing in support of instructional, research, or public service activities.

(56) Shell Space--An area within a building with an unfinished interior designed to be converted into usable space at a later date.

(57) Space Need--The result of the comparison of an institution's actual space to the predicted need as calculated by the Board's Space Projection Model.

(58) Standard--Basis, criteria, or benchmark used for evaluating the merits of a project request or an institutional comparison to a benchmark.

(59) Technical Research Building--Space used for research, testing, and training in a mechanical or scientific field. Special equipment is required for staff and/or student experimentation or observation. Included are specialized laboratories for new technologies that have stringent environmental controls on air quality, temperature, vibration, and humidity. Facilities generally include space for specialized technologies, semiconductors, biotechnology, advanced materials, quantum computing and advanced manufacturing quantum computing technology, nanoscale measurement tools, integrated microchip-level technologies for measuring individual biological molecules, and experiments in nanoscale disciplines.

(60) Tracking Report--Institutional reports indicating the status of approved projects.

(61) Tuition Revenue Bonds Project--A project for which an institution has legislative authority to finance a construction or land acquisition project as provided for in Texas Education Code, §§55.01 - 55.25.

(62) Unimproved Real Property--Real property on which there are no buildings or facilities.

(63) University System--The association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2005.

TRD-200505037
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: September 9, 2005
For further information, please call: (512) 427-6114

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SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.12

The Texas Higher Education Coordinating Board adopts amendments to §17.12, concerning Campus Planning, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5477).

Specifically, these amendments provide the Board's new committee structure and Coordinating Board organizational changes. Adopted §17.12 also amends Board rules to reflect Commissioner approval authority regarding auxiliary enterprise projects with a total project cost of $15 million but less than $25 million and Assistant Commissioner or Associate Commissioner approval authority regarding auxiliary enterprise projects with a total project cost of less than $15 million.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.21, §17.22

The Texas Higher Education Coordinating Board adopts amendments to §17.21 and §17.22, concerning Campus Planning, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5478).

Specifically, these amendments provide: the Board's new committee structure and Coordinating Board organizational changes.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
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SUBCHAPTER D. RULES APPLYING TO NEW CONSTRUCTION AND ADDITION PROJECTS

19 TAC §17.30

The Texas Higher Education Coordinating Board adopts amendments to §17.30, concerning Campus Planning, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5478).

Specifically, these amendments provide: the Board's project standards regarding efficiency for parking structures.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. RULES APPLYING TO AUXILIARY ENTERPRISE PROJECTS

19 TAC §17.60

The Texas Higher Education Coordinating Board adopts amendments to §17.60, concerning Campus Planning, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5479).

Specifically, these amendments provide: the Board's new committee structure and Coordinating Board organizational changes.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
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SUBCHAPTER H. RULES APPLYING TO INTERCOLLEGIATE ATHLETIC PROJECTS

19 TAC §17.70

The Texas Higher Education Coordinating Board adopts amendments to §17.70, concerning Campus Planning, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5479).

Specifically, these amendments provide: the Board's new committee structure and Coordinating Board organizational changes.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
General Counsel
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For further information, please call: (512) 427-6114

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SUBCHAPTER J. RULES APPLYING TO TUITION REVENUE BOND PROJECTS

19 TAC §17.90

The Texas Higher Education Coordinating Board adopts amendments to §17.90, concerning Campus Planning, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5480).

Specifically, these amendments provide: the Board's new committee structure and Coordinating Board organizational changes.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER L. FACILITIES AUDIT

19 TAC §17.110, §17.113

The Texas Higher Education Coordinating Board adopts amendments to §17.110 and §17.113, concerning Campus Planning, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5480).

Specifically, these amendments provide: the Board's new committee structure and Coordinating Board organizational changes.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jan Greenberg
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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning accountability and performance monitoring. The amendment is adopted without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5894) and will not be republished. The section describes the Performance-Based Monitoring Analysis System (PBMAS) and adopts applicable excerpts of the PBMAS 2004-2005 Manual, dated December 14, 2004. The amendment adopts applicable excerpted sections of the PBMAS 2005 Manual, dated July 28, 2005.

House Bill 3459, 78th Texas Legislature, 2003, added TEC, §7.027, limiting compliance monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. The intent of this change was to limit and redirect monitoring efforts. To meet this requirement, the agency developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to the PBMAS. 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1005, Performance-Based Monitoring Analysis System, adopted to be effective June 5, 2005, describes the purpose of the PBMAS and manner in which school district and charter school performance is reported. This rule also adopted applicable excerpts of the PBMAS 2004-2005 Manual. The commissioner establishes specific

criteria and calculations annually and communicates that information to school districts and charter schools.

The adopted amendment updates the current rule to incorporate provisions for the most recent PBMAS manual by adopting applicable excerpts of the PBMAS 2005 Manual. These excerpts describe specific criteria and calculations used to assign 2005 PBMAS performance levels. The adopted amendment also adds language to specify that the PBMAS manual adopted for the previous school year will remain in effect with respect to that school year. No changes were made to the rule or manual since published as proposed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §7.027, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations.

The amendment implements the Texas Education Code, §7.027.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2005.

TRD-200505080
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Director, Policy Coordination
Texas Education Agency
Effective date: November 24, 2005
Proposal publication date: September 16, 2005
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CHAPTER 176. DRIVER TRAINING SCHOOLS SUBCHAPTER BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

19 TAC §§176.1101, 176.1104, 176.1105, 176.1117, 176.1118

The Texas Education Agency (TEA) adopts amendments to §§176.1101, 176.1104, 176.1105, 176.1117, and 176.1118, concerning driver training schools. Sections 176.1101, 176.1104, 176.1105, and 176.1118 are adopted without changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4776) and will not be republished. Section 176.1117 is adopted with changes to the proposed text published on August 19, 2005. The sections establish provisions relating to minimum standards for operation of licensed Texas driving safety schools and course providers. The adopted amendments implement the issuance of certificate numbers rather than paper certificates, in accordance with House Bill 468, 79th Texas Legislature, Regular Session, 2005. The amendments also include a correction of inconsistent use of terms.

Effective September 1, 2005, House Bill 468, 79th Texas Legislature, 2005, amended language found in the TEC, Chapter 1001. Specifically, House Bill 468 amended TEC, §§1001.056, 1001.151(e), 1001.209(b), 1001.351(a) and (b), 1001.456(b), and 1001.555(a) and (c), to change the manner in which uniform certificates of course completion are provided. Until September 1, 2005, the agency provided each licensed course provider with printed uniform certificates of course completion. In accordance with House Bill 468, the agency must now provide course completion certificate numbers instead. This change requires the agency to discontinue the printing and distribution of serially numbered forms and to approve certificates designed, printed, and distributed by owners of driving safety courses and allows the industry to purchase serial numbers to place on those certificates. The adopted amendments to rules in 19 TAC Chapter 176, Subchapter BB, implement this legislative change. The adopted language also includes a correction to terminology. Following is a summary of the adopted amendments.

There are no changes to the amendment to 19 TAC §176.1101, Definitions, since published as proposed. The adopted amendment revises paragraph (10) to insert language to include purchase of numbers for the production of uniform certificates of completion for the existing definition of an inactive course; adds new paragraph (12) to define mail or commercial delivery and forbid the use of e-mail and facsimile as delivery methods; and renumbers subsequent paragraphs accordingly. Renumbered paragraph (18), previous paragraph (17), is revised to enable course providers to issue uniform certificates of completion using serial numbers purchased from the Driver Training Division. The revision to paragraph (18) also adds Article 45.051 of the Code of Criminal Procedures as a requirement for certificates and defines a certificate as all parts of an original or duplicate certificate.

There are no changes to the amendment to 19 TAC §176.1104, Course Provider Licensure, since published as proposed. The adopted amendment modifies subsections (k) and (l) to add language to include certificate numbers as well as paper certificates.

There are no changes to the amendment to 19 TAC §176.1105, Driving Safety School and Course Provider Responsibilities, since published as proposed. The adopted amendment modifies subsection (b) by adding new paragraphs (9) and (10) with language to enable course providers to print and issue both original and duplicate agency-approved uniform certificates of course completion and report the issuance to the agency within seven days. Subsection (c) is modified by adding new paragraph (10) to require school owners to pay, within seven days, a fee equal to the fee paid by the course provider for original uniform certificate of course completion numbers for those certificates issued to their students.

There are changes to the amendment to 19 TAC §176.1117, Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course, since published as proposed. The adopted amendment modifies subsection (a), as follows.

Paragraphs (17) and (18) are adopted with changes in response to public comments. As proposed, paragraph (17) would set the fee for a duplicate at $10 and allow a course provider to waive the fee if the duplicate is provided due to no fault of the student. As adopted, paragraph (17) sets the fee for duplicate certificates at $10 and allows students to receive a duplicate at no cost under certain, limited circumstances for the 30-day period immediately following the date of issue. As proposed, paragraph (18) would require course providers to use agency guidelines for the issuance of original and duplicate certificates. As adopted, para-

graph (18) requires course providers to implement and maintain systems to keep the need for duplicate certificates at a minimal rate and provides that exceeding a reasonable and prudent ratio of duplicates to originals is sufficient evidence to begin sanction proceedings.

Paragraphs (2) - (16) are adopted without changes since published as proposed. Paragraph (2) requires course providers to implement, maintain, and use policies to secure original and duplicate certificates of course completion and the related certificate numbers. In paragraph (3), language is modified to include certificate numbers purchased from the agency. The language formerly appearing in paragraph (4) is removed and subsequent paragraphs are renumbered. In newly numbered paragraph (4), replacement language includes certificate numbers as an item to be recreated in the event of lost data. In paragraph (5) the language clarifies which students may be issued a certificate and what documents prove successful completion of a driving safety course. Paragraph (6) sets requirements for retention of certain records by course providers. Paragraphs (8) and (9) add language to include certificate numbers. Paragraph (10) requires that course providers mail all original and duplicate certificates by first class mail or enhanced postal services or a commercial equivalent. Paragraph (11) adds language to include certificate numbers. Paragraph (12) prohibits course providers from issuing certificates to students who have not completed all elements of the course. New language was added in paragraphs (13) -(18). Paragraph (13) requires course providers to use discrete numbers from original and duplicate certificates. Paragraph (14) requires course providers to sequentially number certificates using numbers purchased from the agency. Paragraph (15) requires course providers to use discrete numbers for duplicate certificates and show both the original and duplicate serial numbers on the duplicate certificate. Paragraph (16) requires course providers to show original and changed data fields on duplicate certificates.

There are no changes to the amendment to 19 TAC §176.1118, Application Fees and Other Charges, since published as proposed. The adopted amendment modifies subsection (a) by adding language to include a fee for course providers who change ownership, in accordance with TEC, §1001.213. Subsection (c)(17) relating to the fee for duplicate certificates is removed and the following paragraph is renumbered. Duplicate certificate fees will now be collected by course providers instead of the agency, as addressed in 19 TAC §176.1117(a)(17). Newly numbered subsection (c)(17) sets the fee for purchase of a course completion certificate number at $1.70.

Until the passage of House Bill 468, course providers (private industry) were required to purchase Uniform Certificates of Course Completion from the Driver Training Division. This law allows course providers to purchase serial numbers to apply to agency-approved certificates printed by the industry. The cost of paper certificates (under the old system) and serial numbers under House Bill 468 is the same. Additionally, the bill allows course providers to issue duplicate certificates at a price set by the agency. The fee for a duplicate is set in rule at $10.

There will be a cost for printing the original and duplicate certificates. There will be a savings to private industry because they will no longer have to pay for shipment of paper certificates but rather will buy serial numbers electronically. There will be a profit in the sale of duplicate certificates, previously handled by the Driver Training Division. The increased revenues and decreased cost should result in a revenue-neutral position for the industry.

The adopted amendments may result in savings to some course providers who operate in multiple states because they will be able to use a common form for production of original and duplicate uniform certificates of course completion.

The adopted revisions will result in direct mailing of duplicate certificates from the course provider to the student. This may, in some instances, result in faster service for the student.

Comments from the driver training industry, consumers, legislators, and other stakeholders were solicited and the responses received contributed to the development of the proposed amendments. In addition, the public was given the opportunity to submit written/electronic comments. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendments to 19 TAC Chapter 176, Subchapter BB.

Comment. A course provider commented regarding §176.1105 asking that the agency include language to require schools to pay all fees owed to the course provider and deliver all documents required by the course provider within seven days of the class.

Agency response. The agency disagrees. The rule currently permits course providers to set timelines for schools to pay royalty fees and deliver documents to comply with individual course provider procedures. Course providers currently have flexibility in setting their internal business procedures and the agency is unwilling to regulate the relationship between independent businesses such as between a school and the course provider endorsing that school.

Comment. A course provider commented that language in §176.1117(a)(13) and (15) should be changed and, in a mass mailing, asked other course providers to support the position. Several course providers commented in support of the suggested change. The course provider proposed using the original certificate numbers on all duplicate certificates. However, when asked by the agency how both the agency and course providers would keep track of duplicates, the course provider withdrew the suggestion.

Agency response. The agency disagrees with using original certificate numbers on duplicate certificates. The original request was withdrawn and the language proposed in §176.1117(a)(13) and (15) was adopted without changes.

Comment. A course provider commented that language in §176.1117(a)(17) should be changed and, in a mass mailing, asked other course providers to support the position. Several course providers commented in support of the language. The change in language suggested was that the agency should remove the restriction on what a course provider could charge for overnight mailing and set the fee for a duplicate certificate at $10 unless certain conditions were met during the 30-day period immediately following issuance of the original certificate of course completion. The same course provider also suggested that language be included to require that course providers notify schools they endorse and put information on the cost of duplicates in the student contract.

Agency response. The agency agrees and revised language to conform to the requested changes.

Comment. A course provider commented that the language in §176.1117(a)(17) should be amended to allow a course provider to determine when to charge a fee for a duplicate certificate.

Agency response. The agency disagrees. This does not meet the requirement in House Bill 468 that requires the agency to set the fee for a duplicate. The suggested change could provide an opportunity for abuse by industry members and the general public. The rule as adopted permits the course provider to waive the $10 fee if certain conditions were met during the 30-day period immediately following issuance of the original certificate

Comment. A course provider commented that the language in §176.1117(a)(17) as amended should set a beginning and ending date during which a duplicate certificate shall be issued without charging the student a fee. The suggestion was that a student could not request a duplicate within the first 14 days and receive a free duplicate.

Agency response. The agency disagrees but has added language in subsection (a)(17) to assist in this area. The agency disagrees that the course provider should charge a student $10 for a certificate that is misdirected or damaged within the first 30 days following issuance of the original. The language added covers students in those distinct situations.

Comment. A course provider commented that §176.1117(a)(17) should allow course providers to charge for every duplicate certificate issued, regardless of the circumstances, because the costs associated with providing a duplicate could not be recovered for duplicates that were issued at no cost to the student.

Agency response. The agency disagrees. Students should not be required to pay for duplicate certificates when the original was never mailed, misdirected, damaged, or when the student was not otherwise at fault.

Comment. A course provider commented that the language in §176.1117(a)(17) as originally proposed restricted the amount of money a course provider could charge for delivery of a duplicate certificate and that language exceeded the rulemaking authority of the agency.

Agency response. The agency disagrees; however, although the agency believes that Texas Education Code, §1001.052 and §1001.053, provide sufficient authority to implement such a rule, the language referring to overnight or commercial delivery services has been removed in the adopted version.

Comment. A course provider commented that language in §176.1117(a)(18) should be deleted for lack of authority and, in a mass mailing, asked other course providers to support the position. Several course providers commented in support of the language. The course provider, supported by others, suggested that §176.1117(a)(18) be replaced with language that gives the agency enforcement powers over situations where course providers fail to implement and maintain methods to minimize the ratio of duplicate certificates needed.

Agency response. The agency agrees and revised language in §176.1117(a)(18) to conform to the requested changes.

Comment. A course provider commented that language in §176.1117(a)(18) as amended (see previous comment) should be linked to a specific violation of law or rule rather than using the more general "a violation of this subchapter."

Agency response. The agency agrees and revised language in §176.1117(a)(18) to conform to the requested change.

The amendments are adopted under Texas Education Code, §1001.052, which authorizes the agency to adopt and administer comprehensive rules governing driving safety courses and Texas Education Code, §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The amendments implement the TEC, §§1001.051 - 1001.053, 1001.056, and 1001.213.

§176.1117. Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course.

(a) Course provider responsibilities. Course providers shall be responsible for original and duplicate uniform certificates of course completion in accordance with this subsection.

(1) The course provider of a driving safety or specialized driving safety course shall ensure that each instructor completes the verification of course completion document approved by the Texas Education Agency (TEA). The verification of course completion document shall contain a statement to be signed by the instructor that states: "Under penalty of law, I attest to the fact that the student whose name and signature appears on this document has successfully completed the number of hours as required under Texas Education Code, Chapter 1001, and that any false information on this document will be used as evidence in a court of law and/or administrative proceeding." This verification of course completion document shall be returned to the course provider upon completion of each driving safety class and maintained for no less than three years.

(2) The course provider shall implement and maintain a policy which effectively ensures protective measures are in use at all times for securing original and duplicate uniform certificates of course completion and course completion certificate numbers. The records and unissued or unnumbered original and duplicate uniform certificates of course completion shall be readily available for review by representatives of TEA.

(3) The course provider shall maintain electronic files with data pertaining to all course completion certificate numbers purchased from TEA. The course provider shall make available to TEA upon request an ascending numerical accounting record of the numbered uniform certificates of completion issued. The course provider shall ensure security of the data.

(4) The course provider shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all certificate numbers, whether used or not used, and all certificates that have been issued.

(5) Course providers shall issue and mail uniform certificates of course completion only to students who have successfully completed all elements of the course provider's approved driving safety or specialized driving safety course taught by TEA-licensed instructors in TEA-approved locations as indicated on the verification of course completion document or student footprint.

(6) The course provider must keep all parts of all voided original and duplicate uniform certificates of course completion for a period of three years.

(7) Course providers shall ensure that adequate training is provided regarding course provider policies and updates on course provider policies to all driving safety schools and instructors offering their approved driving safety or specialized driving safety course.

(8) Course providers shall report all unaccounted original and duplicate course completion certificate numbers or unissued certificates or duplicates to the division within five business days of the discovery of the incident. In addition, the course provider shall be

responsible for conducting an investigation to determine the circumstances surrounding the unaccounted items. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted for approval to the division within 30 days of the discovery.

(9) Each unaccounted or missing original or duplicate course completion certificate number or blank or unissued original or duplicate uniform certificate of completion may be considered a separate violation within the meaning of Texas Education Code, §1001.553. This may include lost, stolen, or otherwise unaccounted original or duplicate course completion certificate number or blank or unissued original or duplicate uniform certificates of course completion.

(10) Course providers shall mail all original and duplicate uniform certificates of course completion using first-class or enhanced postage or an equivalent commercial delivery method.

(11) Course providers shall not transfer course completion certificate numbers to a course other than the course for which the certificates were ordered from TEA.

(12) No course provider or employee shall complete, issue, or validate a uniform certificate of course completion to a person who has not successfully completed all elements of the entire course as verified by a TEA-licensed instructor.

(13) No course provider or employee shall issue, mail, transfer, or transmit an original or duplicate uniform certificate of course completion bearing the serial number of a certificate or duplicate previously issued.

(14) Course providers shall sequentially number original uniform certificates of course completion from the block of numbers purchased from the division for the purpose specified in paragraph (13) of this subsection.

(15) When a duplicate uniform certificate of course completion is issued by a course provider, the duplicate certificate shall bear a serial number from the block of numbers purchased from the division by the course provider. The duplicate certificate of course completion shall clearly indicate the number of both the duplicate and the original serial number of the certificate being replaced.

(16) Any item on a duplicate uniform certificate of course completion that has different data than that shown on the original certificate must clearly indicate both the original data and the replacement data; for example, a change in the date of course completion must show the correct date and "changed from XX," where "XX" is the date shown on the original uniform certificate of course completion.

(17) The fee for a duplicate uniform certificate of course completion is $10. If the student requests a duplicate within 30 days of the date of issue of the original certificate because the original was not received or was damaged so as to be unusable or was issued with errors due to no fault of the student, the course provider shall issue the duplicate at no cost to the student. Course providers shall ensure that schools endorsed to offer the approved course are aware of this rule and shall include this information in the student enrollment contract.

(18) Course providers shall implement and maintain methods for efficiently issuing and mailing original uniform certificates of course completion so that issuance of duplicate certificates is kept at a minimal rate. A ratio of duplicates to originals that would indicate to a reasonable and prudent person that the course provider has failed to minimize duplicates constitutes evidence that a violation of Texas Education Code, §1001.056(c-1), exists and shall be sufficient to initiate proceedings to sanction or condition the license of the course provider in question.

(b) School owner responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety school owners shall ensure that:

(1) the course provider policies are followed and communicated to all instructors and employees of the school; and

(2) all records are returned to the course provider in a timely manner as set forth by the course provider.

(c) Instructor responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety and specialized driving safety instructors shall ensure that:

(1) all records are returned to the driving safety school to be forwarded to the course provider within the time allowed by course provider policy;

(2) the verification of course completion document provided by the course provider is signed by the instructor who conducted the class upon completion of the class;

(3) the entire course is completed prior to signing the verification of course completion document;

(4) the court information is obtained from each student taking the driving safety or specialized driving safety class for the purposes of Code of Criminal Procedure, Article 45.051 and 45.0511. Students who want an insurance reduction only shall have "insurance only" indicated in the court information area on the verification of course completion document provided to the course provider; and

(5) the instructor adheres to the school and course provider policies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 1, 2005.

TRD-200504994
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 21, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.8

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC Chapter 101, §101.8, concerning persons with criminal backgrounds, without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5523).

The amendments enact certain changes to Tex. Occ. Code §263.006, imposed by Senate Bill 610, §7, 79th Legislature. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

The amendment specifically enumerates the offenses that would trigger either a mandatory suspension upon an initial conviction, or a mandatory revocation upon a final conviction, pursuant to the revised statutory directives. It further requires only proof of conviction for the board to take action, rather than a finding of conviction in an administrative hearing.

There are no other substantive changes to the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505094
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Effective date: November 27, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 475-0972

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CHAPTER 102. FEES

22 TAC §102.1

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC Chapter 102, §102.1, regarding the Board's fee schedule, without changes to the proposed text published in the September 9, 2005 issue of the *Texas Register* (30 TexReg 5525). The amendments correct the omission of updated faculty fees in a previous amendment.

There are no other substantive changes to the section.

No comments were received regarding adoption of the amendment.

The section is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adoption of the section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505100
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Effective date: November 27, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 475-0972

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CHAPTER 107. DENTAL BOARD PROCEDURES
SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §107.103

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC Chapter 107, §107.103, concerning dismissal of complaints, without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5525). The amendments enact certain changes imposed by Senate Bill 610, §2, 79th Legislature.

The amendment deletes subsection (d), referring to the expunction of certain dismissed complaints, in its entirety, in accordance with the repeal of Tex. Occ. Code §255.006(d)(7).

The section as amended also contains revisions to clarify and standardize language, and to improve organization.

There are no other substantive changes to the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505103
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Effective date: November 27, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 475-0972

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CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.9

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC Chapter 108, §108.9, concerning dishonorable conduct, without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5527). The amendments clarify the applicability of the rule to not only dentist licensees, but also other individuals holding licenses issued by the Board.

This clarification is effected in the amendment by the elimination of the words "dental" to modify "licensee," and the replacement of "dentist" with "licensee." It should be noted that the term "licensee" encompasses all individuals holding licenses, permits or registrations issued by the Board.

There are no other substantive changes to the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505101
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Effective date: November 27, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 475-0972

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22 TAC §108.11

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC Chapter 108, §108.11, concerning display of registration, without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5528). The amendments enact certain statutory changes imposed by Senate Bill 610, §4, 79th Legislature. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

The amendment tracks the language of Tex. Occ. Code §256.103(c), as amended by Senate Bill 610, by adding language that essentially allows a grace period of 30 days from the issuance of a license until the current registration certificate must be publicly displayed. This time period sufficiently covers the time for production and delivery of the registration certificate.

There are no other substantive changes to the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505102
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Effective date: November 27, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 475-0972

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.1

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC Chapter 114, §114.1, concerning the permitted duties for dental assistants, without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5528). The amendments enact certain requirements imposed by Senate Bill 610, §5, 79th Legislature. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

The amendment tracks the language of Tex. Occ. Code §258.054(c) as amended by Senate Bill 610, expressly prohibiting a dentist from delegating or otherwise authorizing the making of x-rays to a dental assistant who is not certified by or registered with the Board to do so. Currently, the only language in statute and Board rule directly addressing the topic only say that a dental assistant may not perform such duties. While the prohibition against the delegation of such acts is clear from other provisions in the Dental Practice Act and Board rule, this addition makes it explicit.

There are no other substantive changes to the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules

necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The amendments affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505104
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Effective date: November 27, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 475-0972

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22 TAC §114.3

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC Chapter 114, §114.3, concerning certification for the application of pit and fissure sealants by a dental assistant, without changes to the proposed text as published in the September 9, 2005 issue of the *Texas Register* (30 TexReg 5529). The amendments enact certain changes to Texas Occupations Code, §265.004, imposed by Senate Bill 610, §8, 79th Legislature. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

The amendments allow a CODA-accredited dental assisting program to meet the 16-hour educational requirement for a dental assistant's pit and fissure certification. Currently, only CODA-accredited dental hygiene programs are accepted.

There are no other substantive changes to the section.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §§2001.021, et seq., Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The adoption of the amendments affect Title 3, Subtitle D of the Texas Occupations Code and Texas Administrative Code, Title 22, Part 5, Chapter 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505112
Jim Zukowski, Ed.D.
Executive Director
State Board of Dental Examiners
Effective date: November 27, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 475-0972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS
SUBCHAPTER B. TRAINING AND EDUCATION OF EMPLOYEES

31 TAC §3.22, §3.24

The General Land Office (GLO) adopts amendments to Chapter 3, Subchapter B, §3.22, relating to Employee Obligation and §3.24, relating to No Effect on At-Will Employment Status. The amendments are adopted without changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6232) and will not be republished.

Previously, §3.22 and §3.24 had non-substantive typographical and grammatical errors in the body of the text. The amendments to §3.22 and §3.24 corrected those errors.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Government Code §§656.041 - 656.049 which requires the GLO to adopt rules relating to the training and education of its employees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505091
Larry L. Laine
Chief Clerk
General Land Office
Effective date: November 27, 2005
Proposal publication date: September 30, 2005
For further information, please call: (512) 305-8598

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SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The General Land Office (GLO) adopts amendments to Chapter 3, Subchapter C, §3.31, relating to Fees. The amendments are adopted without changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6232) and will not be republished.

The current §3.31 contains a fee schedule for copying practices and services that no longer reflects the GLO's current practices

and services. The proposed amendments to §3.31 adjust the services and fees to reflect these current practices and services.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Natural Resources Code, §§31.054, 51.174 and 52.324 that provide the GLO with the authority to set and collect certain fees and to make and enforce rules consistent with law.

The Texas Natural Resources Code, Chapters 31, 32, and 51 are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2005.

TRD-200505092
Larry L. Laine
Chief Clerk
General Land Office
Effective date: November 27, 2005
Proposal publication date: September 30, 2005
For further information, please call: (512) 305-8598

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 93, §93.101 (Scope; Definitions; Severability), §93.201 (Party Status), §93.202 (Computation of Time), §93.203 (Ex Parte Communications), §93.204 (Presiding Officer or Body), §93.205 (Notice of Hearing), §93.206 (Default), §93.207 (Service), §93.208 (Delegation of Authority), §93.209 (Subpoenas), §93.210 (Protective Orders; Motions To Compel), §93.211 (Administrative Record), §93.212 (Proposal for Decision), §93.213 (Appearances and Representation), §93.301 (Finality and Request for SOAH Hearing), §93.302 (Referral to ADR), §93.303 (Hearings of Applications to Incorporate, Amend Bylaws, or Merge or Consolidate), §93.304 (Appeals of Applications for Certificates of Authority), §93.305 (Appeals of All Other Applications for Which No Specific Procedure is Provided by this Title), §93.401 (Appeals of Cease and Desist Orders and Orders of Removal), §93.402 (Stays), §93.501 (Request for Hearing to Appeal an Order of Conservation), §93.502 (Retention of Attorney), §93.601 (Motion for Appeal to the Commission), 93.602 (Decision by the Commission), §93.603 (Oral Arguments before the Commission), §93.604 (Motion for Reconsideration), and §93.605 (Final Decisions and Appeals) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to Kerri.Galvin@tcud.state.tx.us. The deadline for comments is December 23, 2005.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200505086
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 7, 2005

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas files this notice of intent to review and readopt 16 Texas Administrative Code (TAC) Chapter 9, relating to LP-Gas Safety Rules, in accordance with Texas Government Code, §2001.039. The Commission's reasons for adopting these rules continue to exist; however, in a separate, concurrent rulemaking, the Commission is proposing some amendments to §9.9, relating to Requirements for Certificate Renewal, and §9.51, relating to General Requirements for Training and Continuing Education. The proposed amendments will be filed with the *Texas Register* concurrently with this proposed review. The Commission is proposing the amendments to §9.9 and §9.51 to improve the efficiency and recover the cost of administering LP-gas examinations, examination renewals and training requirements for persons who handle LP-gas in the course of their employment with a state agency, county, municipality, school district, or other governmental subdivision, and who elect to become Railroad Commission certified to perform LP-gas activities even though currently they are not required to do so.

Comments on the notice of intent to review the rules in 16 TAC Chapter 9 may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register* The Commission encourages all interested persons to submit comments no later than the deadline; the Commission cannot guarantee that comments submitted after the deadline will be

considered. For further information, call Dan Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas on November 1, 2005.

TRD-200505050
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: November 3, 2005

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Texas Department of Savings and Mortgage Lending

Title 7, Part 4

The Finance Commission of Texas ("Commission") files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 4, Chapter 80 (§§80.1 - 80.23), relating to Texas Mortgage Broker Regulations.

The Commission undertakes its review pursuant to Government Code, §2001.039. The Commission will accept comments for 30 days following publication of the notice in the *Texas Register* as to whether reasons for adopting this chapter continues to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to John Fleming, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to jfleming@sml.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for a separate 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200505069
John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
Filed: November 4, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §402.706(c)

Standard Administrative Penalty Chart		
Category 1 **$0 (Warning) to $1,000 per offense**		
No.	**Violation**	**Reference:**
1	A person knowingly participated in the award of a prize to a bingo player in a manner that disregarded the random selection of numbers or symbols.	BEA, §2001.552
2	A person made a false statement in an application for a license.	BEA, §2001.554(a)(1)
3	A person falsified or made false entries in books and records.	BEA, §2001.554(a)(3)
4	A person conducted, promoted, or administered bingo without a license.	BEA, §2001.551(b)
5	The licensee or a person designated as an agent for a unit failed to timely produce for inspection or audit any book, record, document, or other form of information requested by the Commission.	BEA, §2001.560(c)
Category 2 **$0 (Warning) to $600 for the 1st offense** **$0 (Warning) to $800 for the 2nd offense** **$0 (Warning) to $1,000 for the 3rd offense**		
No.	**Violation**	**Reference:**
6	The organization conducted bingo outside of the licensed time.	BEA, §2001.102(b)(3)
7	The organization sold pull-tab bingo tickets at an unauthorized time.	BEA, §2001.551(b)(1) and §2001.306(d); 16 TAC §402.403(a)(3)
8	The organization conducted bingo at an unauthorized location.	16 TAC §402.200(c); 16 TAC §402.300(e)(2); 16 TAC §402.403(a)(2) and (3)
9	The organization that is a member of a unit did not conduct its bingo games separately from the bingo games of the other members of the unit.	BEA, §2001.434(a)
10	The unit with an agent designated under Section 2001.438(b) failed to immediately notify the Commission of any change in the designated agent.	BEA, §2001.438(d)
11	The organization allowed a game of chance on the premises other than those allowed under Section 2001.416 during an occasion when bingo was being played.	BEA, §2001.416
12	The organization allowed a person other than a bona fide member of the licensed authorized organization conduct, promote, or administer, or assist in conducting, promoting, or administering, bingo.	BEA, §2001.411(a)
13	The organization failed to have an authorized operator present at the bingo occasion.	BEA, §2001.411(b) and §2001.002(6) and 16 TAC §402.201
14	A person not listed on the registry of approved bingo workers acted as an operator, manager, cashier, usher, caller, or salesperson for an organization.	BEA, §2001.313(d) and 16 TAC §402.402(b)
15	The organization allowed a person(s) under the age of 18 to conduct or assist in the conduct of bingo.	BEA, §2001.418(c)
16	The organization or unit failed to disburse for charitable purposes at least 35% of the average adjusted gross receipts.	BEA, §2001.457(a)
17	The organization obtained by purchase or other manner bingo equipment, devices or supplies from a person other than a licensed distributor (except as provided in Section 2001.257(b).	BEA, §2001.407(e)

Category 3 $0 (Warning) to $400 for the 1st offense $0 (Warning) to $600 for the 2nd offense $0 (Warning) to $800 for the 3rd offense		
No.	**Violation**	**Reference:**
18	The licensee failed to report to the Commission in writing within ten (10) working days of the date of any change respecting any facts set forth in the application.	BEA §2001.211; 16 TAC §402.400(p)
19	The licensee failed to respond, or timely respond, in writing to all relevant audit findings and recommendations in the draft audit report presented at the exit conference.	16 TAC §402.500(g)(3)
20	The organization failed to withhold prize fees.	BEA, §2001.502
21	The organization or unit failed to deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes.	BEA, §2001.451; BEA, §2001.435(b)
22	The organization incurred or paid items of expense in connection with the conduct of a game of bingo that were not reasonable and necessarily expended for authorized expenses.	BEA, §§2001.453(a)(1), 2001.458 and 2001.459
23	Proceeds given to a person for a charitable purpose were used by the donee to pay for services rendered or materials purchased in connection with the conduct of bingo by the donor organization.	BEA, §2001.002(20) and §2001.455(1)
24	The net proceeds of any game of bingo and of any rental of premises for bingo were not used exclusively for charitable purpose or were used by the donee for an activity that would not constitute a charitable purpose, if the activity were conducted by the donor organization.	BEA, §2001.454 and §2001.455(2)
25	A person failed to maintain records that fully and truly record all transactions connected with the conduct of Bingo, the leasing of premises to be used for the conduct of bingo, or the manufacture, sale, or distribution of bingo supplies or equipment.	BEA, §2001.505(b) and §2001.554(a)(2)
26	A commercial lessor licensed to conduct bingo, did not properly deposit in its bingo checking account all rental payments from authorized organizations conducting bingo at the location of the lessor.	BEA, §2001.451(b)
27	Rent for premises used for the conduct of bingo that was paid to the lessor was not paid in a lump sum that included all expenses authorized by the Bingo Enabling Act, Section 2001.458.	BEA, §2001.406(b)
28	Deposits were made later than the end of the next business day following the day of the bingo occasion on which the receipts were obtained, except as provided by Subsection (b-1).	BEA, §2001.451(b)
Category 4 **$0 (Warning) to $300 for the 1st offense** **$0 (Warning) to $450 for the 2nd offense** **$0 (Warning) to $600 for the 3rd offense**		
No.	**Violation**	**Reference:**
29	The organization or unit deposited funds, other than from the conduct of bingo, in the bingo account.	BEA, §2001.451(d)
30	The organization failed to clearly identify the conductor, by name exactly as it is shown on the license, on an advertisement or promotion of a bingo occasion.	16 TAC §402.200(a)
31	Check(s) or slip(s) were made payable to 'cash', 'bearer', or to a fictitious payee.	BEA, §2001.452(a)
32	Checks did not contain the required information.	BEA, §2001.452(a) and §2001.452(b)

Category 5 **$0 (Warning) to $200 for the 1st offense** $0 (Warning) to $300 for the 2nd offense **$0 (Warning) to $400 for the 3rd offense**		
No.	**Violation**	**Reference:**
33	Funds from the sale of a bingo gift certificate were not maintained separately from bingo funds until the certificate was redeemed for a bingo card, pull-tab bingo or a card-minding device.	16 TAC §402.503(g)(1)
34	The organization failed to have required information imprinted on each bingo gift certificate.	BEA, §2001.4155(b) and 16 TAC §402.503(e)
Category 6 **$0 (Warning) to $100 for the 1st offense** **$0 (Warning) to $150 for the second offense** **$0 (Warning) to $200 for the third offense**		
No.	**Violation**	**Reference:**
35	The organization failed to withdraw funds from the bingo account by preprinted, consecutively numbered checks or withdrawal slips.	BEA, §2001.452(a)
36	Checks or withdrawal slips were not made payable to a person or organization.	BEA, §2001.452(a)
37	The organization failed to keep and account for all checks, including voided checks and slips.	BEA, §2001.452(c)
Category 7 **$0 (Warning) for the 1st offense** **$0 (Warning) for the 2nd offense** **$0 (Warning) to $125 for the 3rd offense**		
No.	**Violation**	**Reference:**
38	The organization failed to obtain, maintain, keep current and make available for review to any person upon request a copy of the Bingo Enabling Act and the Rules of the Commission.	16 TAC §402.200(e)

Figure: 16 TAC §402.707(g)

Expedited Administrative Penalty Chart		
Violation	**Reference**	**Penalty**
The organization conducted bingo outside of the licensed time.	BEA, §2001.102(b)(3)	1st Offense--$200 2nd Offense--$300 3rd Offense--$500
The organization sold pull-tab bingo tickets at an unauthorized time.	BEA, §2001.551(b)(1) and §2001.306(d); 16 TAC §402.403(a)(3)	1st Offense--$200 2nd Offense--$300 3rd Offense--$500
The organization that is a member of a unit did not conduct its bingo games separately from the bingo games of the other members of the unit.	BEA, §2001.434(a)	1st Offense--Warn 2nd Offense--$300 3rd Offense--$500
The organization failed to have an authorized operator present at the bingo occasion.	BEA, §2001.411(b) and §2001.002(6) and 16 TAC §402.201	1st Offense--$200 2nd Offense--$300 3rd Offense--$500
The limit of $750.00 was exceeded on a single prize for regular or pull-tab bingo.	BEA, §2001.420(a)	1st Offense--$200 2nd Offense--$300 3rd Offense--$500
Prizes with an aggregate value of more than $2,500.00 for bingo games other than pull-tab bingo were offered or awarded for a single bingo occasion.	BEA, §2001.420(b)	1st Offense--$200 2nd Offense--$300 3rd Offense--$500
The organization failed to prevent bingo workers from playing bingo.	16 TAC §402.200(h)	1st Offense--$150 2nd Offense--$225 3rd Offense--$375
The organization offered or provided to a person the opportunity to play bingo without charge.	BEA, §2001.413	1st Offense--$150 2nd Offense--$225 3rd Offense--$375
The organization or lessor failed to conspicuously display the license issued at the place where the game was conducted at all times during the conduct of the game.	BEA, §2001.310(a)	1st Offense--$100 2nd Offense--$150 3rd Offense--$250
The organization failed to have required information imprinted on each bingo gift certificate, specifically: the name and address of the licensed location(s) where the certificate may be redeemed for bingo paper, pull-tab bingo or card-minding devices; the monetary value of the certificate; the name of the licensed organization(s) authorized to accept the certificate; or the expiration date or blank space for the organization or unit to fill in an expiration date.	BEA, §2001.4155(b) and 16 TAC §402.503(e)	1st Offense--$50 2nd Offense--$75 3rd Offense--$125
A door prize with a value of more than $250.00 was offered or awarded.	BEA, §2001.420(c)	1st Offense--$50 2nd Offense--$75 3rd Offense--$125
The organization failed to conspicuously display during a bingo occasion a sign indicating the operator in charge, the sign contained letters less than one (1) inch in height, the sign failed to inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to the operator listed on the sign, or the sign failed to state that if the player is not satisfied with the operators response that the player has the right to file a formal complaint with the Commission.	16 TAC §402.200(f)	1st Offense--$30 2nd Offense--$45 3rd Offense--$75

Expedited Administrative Penalty Chart		
Violation	**Reference**	**Penalty**
The organization failed to verify winning bingo cards by someone at another table or location other than the winners, or by an electronic verifier system, winning cards were not shown on a monitor visible to all players, or the disposable card(s) or electronic representation of the card, was not posted for inspection for at least 30 minutes after the completion of the last game of that organization's occasion.	16 TAC §402.200(i)(1)	1st Offense--$30 2nd Offense--$45 3rd Offense--$75
The organization failed to obtain, maintain, keep current and make available for review to any person upon request a copy of the Bingo Enabling Act and the Rules of the Commission.	16 TAC §402.200(e)	1st Offense--Warn 2nd Offense--Warn 3rd Offense--$75
The organization failed to display on a card-minding device or was displayed in such a manner that was not conspicuous and clearly visible to a player using the device, the toll-free "800" number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling.	BEA, §2001.417(a) and 16 TAC §402.302(f)(1)	1st Offense--Warn 2nd Offense--Warn 3rd Offense--Warn
Violations by a Worker		
A person not listed on the registry of approved bingo workers acted as an operator, manager, cashier, usher, caller, or salesperson for an organization.	BEA, §2001.313(d) and 16 TAC §402.402(b)	1st Offense--Warn 2nd Offense--$45 3rd Offense--$75
A registered worker or operator for an organization did not wear, present, visibly display, or list the individuals name and unique registration number in a legible manner on his/her prescribed identification card, while on duty.	BEA, §2001.314(a) and 16 TAC §402.402	1st Offense--Warn 2nd Offense--$20 3rd Offense--$35

Figure: 37 TAC §4.16(a)(3)

Table 1

Enforcement Cases in Previous 6 Years	Enforcement of a Single Violation	Enforcement of Two Different Violations	Enforcement of Three Different Violations	Enforcement of Four or More Different Violations
0	1.0%	1.2%	1.3%	1.4%
1	1.5%	1.8%	1.9%	2.0%
2 or More	2.5%	2.8%	2.9%	3.0%

Table 2

Enforcement Cases in Previous 6 Years	Enforcement of a Single Violation	Enforcement of Two Different Violations	Enforcement of Three Different Violations	Enforcement of Four or More Different Violations
0	2.0%	2.2%	2.3%	2.4%
1	2.5%	2.7%	2.8%	2.9%
2 or More	3.0%	3.0%	3.0%	3.0%

Figure: 37 TAC §152.5(b)

Figure: 37 TAC §152.25

Unit Name	Capacity
Allred	3,682
Bartlett	1,001
Beto	3,471
Boyd	1,330
Bradshaw	1,980
Bridgeport	520
Briscoe	1,342
Byrd	1,365
Central	1,060
Clemens	1,215
Clements	3,714
Cleveland	520
Coffield	4,139
Cole	900
Connally	2,848
Cotulla	606
Dalhart	1,356
Daniel	1,342
Darrington	1,931
Dawson	2,216
Diboll	518
Dominguez	2,276
Duncan	606
Eastham	2,474
Ellis	2,404
Estelle	3,273
Estes	1,000
Ferguson	2,421
Formby	1,100
Fort Stockton	606
Garza East* *(Includes co-located boot camps and work camps.)*	2,458
Garza West	2278
Gatesville	2,115
Gist	2,276
Glossbrenner	612
Goodman	612
Goree	1,321
Gurney	2,128
Halbert	612
Hamilton	1166
Havins	596
Henley	576
Hightower	1,342
Hilltop	677
Hobby	1,342

Unit Name	Capacity
Hodge	989
Holliday	2,128
Hospital Galveston** *(Medical beds are not permanent housing and do not count toward capacity.)*	0
Hughes	2,900
Huntsville	1,705
Hutchins	2,276
Jester I	323
Jester III	1,131
Jester IV	550
Johnston	612
Jordan	1,008
Kegans	667
Kyle	520
LeBlanc	1224
Lewis	2,190
Lindsey	1,031
Lockhart	500
Lopez	1,100
Luther	1,316
Lychner	2,276
Lynaugh	1,374
McConnell	2,900
Michael	3,221
Middleton	2,128
Montford	950
Moore, B.	500
Moore, C.	1,224
Mt. View	645
Murray	1,313
Neal	1,690
Ney	576
Pack	1,478
Plane	2,276
Polunsky	2,900
Powledge	1,137
Ramsey I	1,891
Ramsey II	1,212
Roach* *(Includes co-located boot camps and work camps.)*	1,842
Robertson	2,900
Rudd	612
Sanchez	1,100
Sayle	632
Scott	1,130
Segovia	1,224
Skyview	528
Smith	2,125
Stevenson	1,342

Unit Name	Capacity
Stiles	2,897
Telford	2,832
Terrell, C.T.	1,603
Torres	1,342
Travis Co.	1161
Tulia	606
Vance	378
Wallace* *(Includes co-located boot camps and work camps.)*	1,502
Ware	916
Wheeler	576
Willacy Co.	1,069
Woodman	900
Wynne	2,621
Young	310

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Request for Applications: Texas Yes! Bootstrap Bucks Reimbursement Program

The Marketing and Promotion Division of the Texas Department of Agriculture (the department) hereby requests applications for the Texas Yes! Bootstrap Bucks reimbursement program (Program) for the period of November 1, 2005 through August 31, 2006. This program is designed to directly promote tourism in rural Texas by assisting promotional campaigns based on project applications submitted by successful applicants in an amount of up to $2,500.00. Program and project application information can be obtained at www.texasyes.org or by contacting the Funding Coordinator at (512) 463-7731 or (866) 4TEX-YES.

Eligibility. To be eligible for participation in the Program, an applicant must be a Texas Yes! Community Member that is a city or county, and is in good standing with the department. A Texas Yes! Community Member that is a city or county can submit an application on behalf of an event, festival or fair. The community member will be responsible for providing the completed Assessment Form and any additional documentation or information requested by the department to indicate the impact of the funds. The department has the sole discretion to determine whether a project meets program eligibility requirements.

Application Requirements. To apply for Texas Yes! Bootstrap Bucks reimbursement funds a community member that is a city or county must: (i) prepare and submit a Bootstrap Bucks application; (ii) submit a completed original Statement of Understanding; and (iii) acknowledge that the applicant will notify the department of any change in the status of the project. The application period begins November 15, 2005, and ends June 31, 2006, for events that occur between January 1, 2006 and August 31, 2006. Complete application documents must be submitted at least two months prior of the date(s) of the event. The department will consider the applications as they are received, and will process applications on the second Tuesday of each month. Each project proposal must use the Texas Yes! Bootstrap Bucks application form and can only apply for one of the following promotional materials: banners, posters, newspaper advertisements or radio/television broadcast spots. The indicated promotional items cannot be sold.

Texas Yes! Community Members can be approved and receive funds for only two Texas Yes! Bootstrap Bucks projects within the biennium, which begins September 1, 2005, and ends August 31, 2007.

All approved application activities and events cannot begin until an executed agreement is in place. Activities and events must be completed by August 31, 2006. The Texas Yes! mark must be utilized on all approved activities or materials. All approved projects will be subject to audit and applicants will be required to submit an Assessment Form.

Applications should be submitted to: Debbie Wall, Funding Coordinator, Texas Department of Agriculture, 1700 North Congress Avenue, 11th Floor, Austin, Texas 78701. Ms. Wall may be contacted by telephone at (512) 463-7731, by fax at (888) 223-5717 or by e-mail at debbie.wall@agr.state.tx.us for additional information about preparing the application.

All eligible applications will be evaluated by the Texas Yes! Bootstrap Bucks Review Committee.

Only project applications that further or enhance the department's Texas Yes! Program and are submitted by applicants physically located in Texas will be considered for funding. The selected budget item requested must enhance the event by expanding into new areas of marketing and promotion or attempting a new and/ or different approach to marketing and promoting the event and area.

All approved applicants must submit artwork and/or text for approval prior to the production of the approved activity or material to receive reimbursement of up to $2,500.00. The reimbursement process will not begin until the event has taken place and all required documentation is received by the department. The approved applicants must submit all required reimbursement documentation within 30 days of the end of the event to receive reimbursement.

The department reserves the right to terminate any award if it determines, in its sole discretion, that a project does not further or enhance the goals of the Texas Yes! Program. The Program is subject to the availability of state funds. If such funds become unavailable during the term of the program and the department is unable to obtain sufficient funds, the program and any agreements shall be reduced or terminated.

The announcement of the grant awards will be made by the Funding Coordinator after the applications received by the department have been fully considered and the Texas Yes! Bootstrap Bucks Review Committee determines the applicants that will receive funds.

TRD-200505173
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: November 9, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 28, 2005, through November 3, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 9, 2005. The public comment period for these projects will close at 5:00 p.m. on December 9, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Mike Mobley; Location: The project is located adjacent to the Gulf Intracoastal Waterway (GIWW) on the south side of County Road (CR) 259 approximately 0.5 miles from the intersection of CR 259 and State Highway 60 in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Matagorda, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 211722; Northing: 3177517. Project Description: The applicant proposes to construct a canal subdivision along the GIWW in Matagorda County, Texas. An approximately 60- by 835-foot, non-bulkheaded canal would be constructed from the GIWW through 1.18 acres of wetlands (0.91 acre low marsh; 0.27 acre high marsh) to create an entrance canal to the proposed development. The canal would be oriented southeasterly to maximize wind and waves from the prevailing southeast winds. The canal would then split at the upland boundary to form a wide, interconnecting zone that would be connected to two 80-foot-wide concrete bulkheaded canals. The west canal would measure 1,375 feet long and the east canal would measure 1,307 feet long, extending northward toward CR 259 (Old Gulf Road). The canals would be 7 feet deep at the north terminus sloping downward to 8 feet deep at its juncture with the GIWW to allow deep draft boats (ocean going vessels) to utilize the canal during extreme low tides of winter. Two breakwaters, each constructed of 120 cubic yards of 6-12 inch diameter concrete riprap, would be installed, one on each side of the proposed entrance canal. A total of approximately 270 cubic yards of soil from the channel construction would be placed behind the two breakwaters to raise the land to a site appropriate for the creation of 0.02 acre of smooth cordgrass marsh (0.01 acre behind each breakwater). No fill would be placed in wetlands. Approximately 66 waterfront lots (each approximately 0.23+ acres) would be constructed on uplands using fill excavated from the canals. All lots would be sloped away from the canals. A 1.6-acre site for future possible placement of sediments dredged from the canal would be located in uplands on the southeast corner. This area can hold approximately 20,000 cubic yards of material and be reused after dredging and dewatering. To compensate for the proposed 1.18 acres of excavated marsh the applicant proposes to construct 5 acres of marsh on a nearby 40-acre site owned by the applicant. Additionally, the 0.02 acres of marsh constructed behind the breakwaters would contribute to the offset of impacts to marsh. CCC Project No.: 06-0038-F1; Type of Application: U.S.A.C.E. permit application #23521(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: EOG Resources, Inc.; Location: The project is located in Aransas Bay approximately 9,300 feet east-northeast from Rockport Harbor, Rockport, Aransas County, Texas. It would originate from an existing production platform in State Tract (ST) 167 (authorized under Department of the Army Permit 12794), continue through ST's 151, 150, 146, 145, 124, 120, 92, and terminate on shore in ST 91. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 694800; Northing: 3105000. Project Description: The applicant proposes to construct two 6-inch-diameter pipelines, 28,529.4 feet in length, along the Aransas Bay shoreline. Approximately 2,227.6 feet of the terminal ends of the lines in ST 91 would be installed by directional drilling in order to avoid impacts to oyster reefs and seagrass beds. The remaining 26,301.8 feet would be jetted, disked or plowed a minimum depth of 3 feet below the bay bottom. Approximately 5,845 cubic yards of sand, silt, and clay would be displaced during pipeline installation. Approximately 52,603 square feet for a temporary trench (2 feet wide by 26,301.8 feet long) would be excavated. Up to 5 feet of bottom (263,010 square feet) on either side of the trench would be temporarily affected. The trench is expected to fill in naturally. No wetlands, seagrass, or oysters would be impacted. CCC Project No.: 06-0041-F1; Type of Application: U.S.A.C.E. permit application #23945 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200505171
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: November 9, 2005

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Comptroller of Public Accounts

Notice of Legal Banking Holidays

Texas Tax Code Annotated §111.053(b) requires that, before January 1 of each year, the Comptroller of Public Accounts publish a list of the legal holidays for banking purposes for that year. This is the Eleventh District Holiday Schedule. Pursuant to the Federal Reserve Bank of Dallas Notice 05-39 dated August 3, 2005. The Federal Reserve Bank of Dallas and its branches at El Paso, Houston, and San Antonio, Texas, will observe the following holidays for calendar year 2006 and will not be open on the dates indicated below.

Monday, January 2, New Year's Day

Monday, January 16, Martin Luther King, Jr. Day

Monday, February 20, Presidents Day

Monday, May 29, Memorial Day

Tuesday, July 4, Independence Day

Monday, September 4, Labor Day

Monday, October 9, Columbus Day

Thursday, November 23, Thanksgiving Day

Monday, December 25, Christmas Day

The Federal Reserve standard holiday schedule mandates that if January 1, July 4, November 11, or December 25 falls on a Sunday, the following Monday will be observed as a holiday. If January 1, July 4, November 11, or December 25 occurs on a Saturday, the preceding Friday will not be observed as a holiday. For the year 2006, January 1 falls on a Sunday; therefore, Monday, January 2, will be observed as a holiday. However, November 11 falls on a Saturday; therefore, the preceding Friday--November 10--will not be observed as a holiday.

TRD-200505180

Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 9, 2005

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Notice of Request for Proposals

Pursuant to Chapters 403, 2155, and 2156, Sections 2155.001 and 2156.121, Texas Government Code and Chapter 2305, Section 2305.038, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces the issuance of its Request for Proposals (RFP #174b) from qualified, independent firms and institutions to provide Energy Education Outreach Services (Services). One or more successful respondents will assist Comptroller in conducting energy education outreach and related services, as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about January 2, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on or after Friday, November 18, 2005, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically on the Texas Marketplace on or after Friday, November 18, 2005, 10:00 a.m. (CZT).

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Friday, December 2, 2005. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on December 6, 2005, or as soon thereafter as practical, on the Texas Marketplace at: http://www.marketplace.state.tx.us. Questions and inquiries received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Friday, December 9, 2005. Proposals received in the Issuing Office after this time and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 18, 2005; Non-Mandatory Letters of Intent and Questions Due - December 2, 2005, 2 p.m. CZT; Official Questions and Responses posted - December 6, 2005 (or as soon thereafter as practical); Proposals Due - December 9, 2005, 2 p.m. CZT; Contract Execution - January 2, 2006, or as soon thereafter as practical; Commencement of Project Activities - January 2, 2006.

TRD-200505179
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 9, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/14/05 - 11/20/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/14/05 - 11/20/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-200505122
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 8, 2005

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Texas Council for Developmental Disabilities

Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to be awarded for the establishment of a network of youth leadership development and advocacy training projects with funding available for up to five local/regional projects and one state-level training project. Each local/regional youth leadership project will provide training to up to 60 youth each year. The state-level youth leadership project will provide training for up to 30 participants each year and provide support to the local/regional training projects. Applicants may submit a proposal for the state-level training project and/or one or more local/regional projects but must submit separate proposals for each project.

The Council has approved up to $75,000 for the statewide project and approximately $50,000 yearly for each local/regional project. Additionally, the Division for Blind Services and the Division for Rehabilitation Services of the Department of Assistive and Rehabilitative Services (DARS) have agreed to offer additional financial support for approximately one-third of the participants in each project. Applicants should develop proposals for local/regional projects assuming not more than $75,000 total federal funds from TCDD and DARS combined. Applicants should develop proposals for the state-level project assuming not more than $100,000 total federal funds from TCDD and DARS combined.

TCDD reserves the right to evaluate project activities and to provide funding for an additional two years if the project(s) is successful. Funding for each project depends on the results of an independent review process established by the TCDD and the availability of funds. Continuation funding will not be automatic. Non-federal matching funds

of at least 10% of total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this request for proposal or more information about TCDD may be obtained through TCDD's Web site at **http://www.txddc.state.tx.us**. All questions pertaining to this RFP should be directed to Sharon Pratscher, Planning Specialist, at (512) 437-5412 (voice), (512) 437-5431 (TDD), or E-mail **Sharon.Pratscher@tcdd.state.tx.us**.

The application packet may be obtained on TCDD's Web site or by requesting a copy in writing by U.S. mail, fax, or E-mail from Barbara Booker at the Texas Council for Developmental Disabilities, 6201 E. Oltorf Street, Suite 600, Austin, TX 78741-7509; fax number (512) 437-5434; E-mail address **Barbara.Booker@tcdd.state.tx.us**. Applications must be requested in writing unless downloaded from the Internet.

Deadline: Two hard copies, one with the original signatures, must be submitted. **All proposals must be received by TCDD not later than 4:00 PM, Central Standard Time, Monday, February 6, 2006, or, if mailed, postmarked prior to midnight on the date specified above.** Proposals may be delivered by hand or mailed to TCDD's physical office at 6201 East Oltorf, Suite 600, Austin, TX 78741-7509 to the attention of Barbara Booker. **Faxed proposals cannot be accepted**.

TCDD also requests that applicants send an electronic copy at the same time the hard copies are submitted. Electronic copies should be addressed to **Barbara.Booker@tcdd.state.tx.us**.

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will schedule telephone conferences and/or workshop(s) to help potential applicants understand the grant application process and the particular RFP. Answers to frequently asked questions will be posted on TCDD's Web site. For more information on the Grant Proposers' Workshop or telephone conference, see the TCDD web site at **http://www.txddc.state.tx.us**.

TRD-200505170
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: November 9, 2005

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Texas Education Agency

Correction of Error

Due to a Texas Register error, the withdrawal of proposed amendments to 19 TAC §§109.1002 - 109.1005, published in the November 4, 2005, issue (30 TexReg 7203) omitted the accompanying explanatory preamble filed by the Texas Education Agency on October 20, 2005 (TRD-200504743). The notice of withdrawal should have reflected the following explanation that was included in the preamble.

"The Texas Education Agency (TEA) withdraws amendments to §§109.1002 - 109.1005, concerning the financial accountability rating system that were published as proposed in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2818). The sections establish provisions relating to the financial accountability rating system, including the assignment of ratings, types of ratings, criteria, and reporting. The sections also include the financial accountability rating form entitled "School FIRST - Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. The proposed amendments would have updated the rating system by adding and enhancing indicators, along with a new worksheet and calculations; establishing a different scoring process for many measures; and creating new disclosure requirements. The revised rating system would have been applicable to school district financial accountability ratings assigned beginning with fiscal year 2005-2006. A new revised rating system will be brought forward at a future date. Schools will continue to use the current worksheet and calculations until such time that future rule action amends the rating system.

"Senate Bill (SB) 875, 76th Texas Legislature, 1999, added Texas Education Code (TEC), §39.201, requiring the commissioner of education in consultation with the comptroller of public accounts to develop proposals for a school district financial accountability rating system that was to be presented to the legislature no later than December 15, 2000. TEC, §39.201, expired September 1, 2001. Subsequently, SB 218, 77th Texas Legislature, 2001, added TEC, §§39.201 - 39.204, requiring the commissioner to adopt rules for the implementation and administration of the financial accountability rating system prescribed by TEC, Chapter 39, Subchapter I. 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System, establishes provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with SB 218. The adopted rules include the financial accountability rating form entitled "School FIRST - Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. This form specifies the minimum financial accountability rating information that a district is to report to parents and taxpayers in the district.

"The financial accountability rating system benefits the public by having in place a system to ensure that school districts will be held accountable for the quality of their financial management practices and achieve improved performance in the management of their financial resources. The withdrawal of the proposed amendment published in May 2005 to update this system will allow more time to develop a more comprehensive proposal."

TRD-200505184

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Request for Applications Concerning Texas 21st Century Community Learning Centers Grant Program, Cycle 4

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-06-004 for the Texas 21st Century Community Learning Centers Grant Program, Cycle 4, from local educational agencies (LEAs) including public school districts, open-enrollment charter schools and regional education service centers; community-based organizations (CBOs); and other public or private entities, non-profit or for profit, or a consortium of two or more agencies, organizations, or entities to establish or expand community learning centers. Examples of agencies and organizations eligible under the 21st Century Community Learning Center program include, but are not limited to, non-profit agencies, city or county government agencies, faith-based organizations, institutions of higher education, and for-profit corporations. A shared services arrangement of two or more LEAs is also eligible to apply.

An application must designate the specific campus(es) that meet the eligibility requirements of the grant in order to determine the students and families to be served in the 21st Century Community Learning Center(s). Eligible campuses are those that qualify for schoolwide programs under Title I, Section 1114, or schools that have a high percentage of low-income families (40 percent or more students identified as economically disadvantaged). One application will be limited to not

more than five community learning center(s). Centers can be located in elementary or secondary schools or similarly-accessible facilities. Each community learning center may serve students from more than one eligible campus, but an eligible campus may not be served by more than one community learning center.

Description. The purpose of the Texas 21st Century Community Learning Centers Grant Program, Cycle 4, is to provide opportunities beyond the normal school day for communities to establish or expand activities in community learning centers that (1) provide opportunities for academic enrichment, including providing tutorial services to help children, particularly students who attend low-performing schools, meet state and local student academic achievement standards in core academic subjects, such as reading and mathematics; (2) offer students a broad array of additional services, programs and activities, such as youth development activities; drug and violence prevention programs; counseling programs; art, music, and physical education and fitness programs; and technology education programs that are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development. Program services must be offered only when schools are not in session (before or after school, during holidays, or during summer recess). The program must be carried out in active collaboration with the schools the students attend. Applications must provide for partnerships between an LEA, a CBO, and other public or private organizations, if appropriate.

Dates of Project. Applicants should plan for a starting date of no earlier than July 1, 2006, and an ending date of no later than June 30, 2007. Applicants must begin the operation of the community learning centers no later than the beginning date of the fall semester for the 2006-2007 school year.

Project Amount. Approximately $8 million is available for funding approximately 53 community learning centers during the 2006-2007 school year and the summer of 2007. The grant request may not be less than $50,000 or greater than $150,000 per center, not exceeding $750,000 for a total of five centers. Project funding in the second and third years will be based on satisfactory progress of the first and second year objectives and activities, respectively; on general budget approval by the U. S. Congress; the number of centers established; the number of students and campuses served by each center; and on the activities to be implemented during out-of-school time throughout the grant period. This project is funded 100 percent from 21st Century Community Learning Center federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each statutory requirement as specified in the RFA and receive a basic average score of above 70 percent of the total points to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicant's Conference. Prospective applicants will be provided an opportunity to receive general and clarifying information from TEA about the scope of the Texas 21st Century Community Learning Centers Grant Program, Cycle 4, on Monday, December 12, 2005, from 1:00 p.m. until 4:00 p.m. on the Texas Educational Telecommunication Network (TETN) available at each regional education service center. The conference will be videotaped. Pre-conference questions may be sent to vicki.logan@tea.state.tx.us prior to December 7, 2005. Each person attending will be required to sign a register setting out the representative's name and the name, address, and telephone number of the applicant organization represented. Prospective applicants who are not able to attend the Applicant's Conference may request a copy of the videotape at no charge from the TEA Division of Discretionary Grants using the contact information that follows.

Requesting the Application. A complete copy of RFA #701-06-004 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9269; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Vicki Logan, Division of Discretionary Grants, Texas Education Agency, (512) 475-4468. In order to ensure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from, or in addition to, information provided in the RFA or at the Applicant's Conference will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions at http://www.tea.state.tx.us/opge/disc/index.html.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, February 7, 2006, to be eligible to be considered for funding.

TRD-200505163
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: November 9, 2005

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding William Head dba Bill Head Enterprise and dba Silver Spur Truck Stop, Docket No. 2002-0561-PST-E on 10/27/2005 assessing $30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Staff Attorney at (210) 403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tiki Leasing Company, LTD. dba Cedar Grove Mobile Home Park, Docket No. 2003-1392-MWD-E on 10/27/2005 assessing $6,682 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Overwraps Packaging, L.P., Docket No. 2003-1589-AIR-E on 10/27/2005 assessing $2,525 in administrative penalties with $505 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pecan Gap, Docket No. 2003-1258-MWD-E on 10/27/2005 assessing $4,955 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Western Oil Tools, Inc., Docket No. 2003-0342-IHW-E on 10/28/2005 assessing $15,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at (512) 239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rohm and Haas Texas, Incorporated, Docket No. 2003-0610-MLM-E on 10/27/2005 assessing $109,719 in administrative penalties with $21,944 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Burlington Northern Santa Fe Railway Company, Docket No. 2003-1343-AIR-E on 10/27/2005 assessing $4,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shaheen Retail Company, Inc. dba Capital Food Mart 2, Docket No. 2003-1021-PST-E on 10/27/2005 assessing $1300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Enviro-Tech Engineers, Inc. dba Roadies, Docket No. 2003-1022-PST-E on 10/28/2005 assessing $2,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at (512) 239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Public Safety, Docket No. 2004-0127-AIR-E on 10/27/2005 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company, L.P., Docket No. 2004-0231-AIR-E on 10/27/2005 assessing $3,925 in administrative penalties with $785 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Jourdanton, Docket No. 2004-0303-MWD-E on 10/27/2005 assessing $4,240 in administrative penalties with $848 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Calvert, Docket No. 2004-0337-MWD-E on 10/27/2005 assessing $4,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dell City, Docket No. 2004-0609-MLM-E on 10/27/2005 assessing $10,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Melvin Williams dba Shelby Trash Service, Docket No. 2004-0689-MSW-E on 10/27/2005 assessing $17,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0252, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Atlanta, Docket No. 2004-0931-PWS-E on 10/27/2005 assessing $1,260 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Porte Methanol Company, L.P., Docket No. 2004-0973-AIR-E on 10/27/2005 assessing $12,480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tenet Hospitals Limited dba Providence Memorial Hospital, Docket No. 2004-1220-AIR-E on 10/27/2005 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H-M-W Special Utility District of Harris and Montgomery Counties, Docket No. 2004-1360-MWD-E on 10/27/2005 assessing $3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2004-1421-PST-E on 10/27/2005 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Barge & Boat, Inc., Docket No. 2004-1477-AIR-E on 10/27/2005 assessing $2,600 in administrative penalties with $520 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding St. Stephens Episcopal School, Docket No. 2004-1487-PST-E on 10/27/2005 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator at (512) 239-4467, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cripple Creek Restaurant, Inc. dba Cripple Creek Restaurant, Docket No. 2004-1534-PWS-E on 10/27/2005 assessing $5,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pritul Investment Inc. dba Citgo Cedar Hill, Docket No. 2004-1679-PST-E on 10/27/2005 assessing $1,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mack Massey Motors, L.P. dba Mack Massey Motors, Docket No. 2004-1694-PST-E on 10/27/2005 assessing $3,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Karim Sunesara dba Jack Grocery 4, Docket No. 2004-1734-PST-E on 10/27/2005 assessing $14,110 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Materials, L.L.C., Docket No. 2004-1845-AIR-E on 10/27/2005 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Residual Fuels, Inc., Docket No. 2004-1912-PST-E on 10/27/2005 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alamo Concrete Products, Ltd., Docket No. 2004-1942-WQ-E on 10/27/2005 assessing $3,880 in administrative penalties with $776 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laguna Madre Water District, Docket No. 2004-1949-MWD-E on 10/27/2005 assessing $12,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FFP Operating Partners, L.P. dba Super Fresh Foods FFP 818, Docket No. 2004-2099-AIR-E on 10/27/2005 assessing $1,060 in administrative penalties with $212 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Products North America, Inc. dba BP Products North America Texas City, Docket No. 2004-2128-AIR-E on 10/27/2005 assessing $18,762 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Feather Crest Farms, Inc. dba Pineywoods Farm, Docket No. 2005-0015-AGR-E on 10/27/2005 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rudolph Foods Company, Inc., Docket No. 2005-0016-AIR-E on 10/27/2005 assessing $2,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-

4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Production Company, L.P., Docket No. 2005-0037-AIR-E on 10/27/2005 assessing $2,180 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rip Griffin Truck Service Center, LP dba Rip Griffin Oil Company, Docket No. 2005-0052-AIR-E on 10/27/2005 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELG Metals, Inc., Docket No. 2005-0096-IWD-E on 10/27/2005 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2005-0121-AIR-E on 10/27/2005 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at (210) 409-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dixie Chemical Company, Inc., Docket No. 2005-0126-AIR-E on 10/27/2005 assessing $3,225 in administrative penalties with $645 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kraft Foods Global, Inc., Docket No. 2005-0149-AIR-E on 10/27/2005 assessing $4,950 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mostafa A. Soliman dba Willowbrook Water Subdivision dba Willowbrook Water Supply, Docket No. 2005-0150-MLM-E on 10/27/2005 assessing $1,261 in administrative penalties with $253 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marathon Petroleum Company, L.L.C., Docket No. 2005-0169-AIR-E on 10/27/2005 assessing $3,800 in administrative penalties with $760 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Goff Homes, Ltd., Docket No. 2005-0174-WQ-E on 10/27/2005 assessing $1,540 in administrative penalties with $308 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HCS Holding Company, L.P. dba The Shops at the Galleria, Docket No. 2005-0210-WQ-E on 10/27/2005 assessing $10,500 in administrative penalties with $2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JPO Enterprises, Inc. dba EZ Clean Car Wash, Docket No. 2005-0239-SLG-E on 10/27/2005 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rushing Paving Company, Ltd., Docket No. 2005-0247-AIR-E on 10/27/2005 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Price Construction, Ltd., Docket No. 2005-0250-AIR-E on 10/27/2005 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trevino Maricela, Docket No. 2005-0259-PST-E on 10/27/2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500 , Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stephen Allison, Docket No. 2005-0266-LII-E on 10/27/2005 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Synthetic Elastomers, L.P., Docket No. 2005-0315-AIR-E on 10/27/2005 assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National-Oilwell, L.P., Docket No. 2005-0317-IWD-E on 10/27/2005 assessing $2,640 in administrative penalties with $528 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Rockwool, Inc. dba Thermafiber, Inc., Docket No. 2005-0335-AIR-E on 10/27/2005 assessing $2,800 in administrative penalties with $560 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises, L.L.C., Docket No. 2005-0347-AIR-E on 10/27/2005 assessing $10,659 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crosby County Fuel Association, Docket No. 2005-0360-PST-E on 10/27/2005 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atlas Roofing Corporation, Docket No. 2005-0368-AIR-E on 10/27/2005 assessing $7,350 in administrative penalties with $1,470 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank J. Simons, Docket No. 2005-0386-OSI-E on 10/27/2005 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kav Corporation Inc. dba Shop N Go Neighborhood Store, Docket No. 2005-0421-PST-E on 10/27/2005 assessing $9,500 in administrative penalties with $1,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Production Company, L.P., Docket No. 2005-0445-AIR-E on 10/27/2005 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Odessa-Ector Power Partners, L.P., Docket No. 2005-0446-AIR-E on 10/27/2005 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Technologies, Inc., Docket No. 2005-0468-AIR-E on 10/27/2005 assessing $5,350 in administrative penalties with $1,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Intercontinental Terminals Company, Docket No. 2005-0486-AIR-E on 10/27/2005 assessing $3,975 in administrative penalties with $795 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shady Valley Management Corp. dba Shady Valley Golf Club, Docket No. 2005-0493-PST-E on 10/27/2005 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Joaquin, Docket No. 2005-0499-PWS-E on 10/27/2005 assessing $510 in administrative penalties with $102 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zuber Group, Inc. dba Convenience King 107, Docket No. 2005-0508-PST-E on 10/27/2005 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rivercrest Independent School District, Docket No. 2005-0537-MWD-E on 10/27/2005 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Permian Tank & Manufacturing, Inc., Docket No. 2005-0541-AIR-E on 10/27/2005 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KM Aviation, Inc., Docket No. 2005-0542-AIR-E on 10/27/2005 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Luling, Docket No. 2005-0550-MWD-E on 10/27/2005 assessing $1,650 in administrative penalties with $330 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District 344, Docket No. 2005-0552-MWD-E on 10/27/2005 assessing $5,880 in administrative penalties with $1,176 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Girl Scouts of Tejas Council Endowment Foundation dba Whispering Cedars Camp, Docket No. 2005-0558-PWS-E on 10/27/2005 assessing $1,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Eldorado, Docket No. 2005-0560-MSW-E on 10/27/2005 assessing $4,950 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Comal Independent School District, Docket No. 2005-0561-EAQ-E on 10/27/2005 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cal-Tex Lumber Company, Inc., Docket No. 2005-0567-AIR-E on 10/27/2005 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sadruddin & Sons, Inc. dba Churchill Grocery, Docket No. 2005-0579-PST-E on 10/27/2005 assessing $3,210 in administrative penalties with $642 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dynegy Midstream Services Limited Partnership, Docket No. 2005-0584-AIR-E on 10/27/2005 assessing $6,250 in administrative penalties with $1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe D. Havens, Inc. dba Havens Landing Wastewater Treatment Plant, Docket No. 2005-0599-MWD-E on 10/27/2005 assessing $6,765 in administrative penalties with $1,353 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Uvalde County Farmers' Cooperative, Docket No. 2005-0601-PST-E on 10/27/2005 assessing $1,920 in administrative penalties with $384 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Bosque Water Supply Corporation, Docket No. 2005-0623-PWS-E on 10/27/2005 assessing $321 in administrative penalties with $64 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L.F. Manufacturing, Inc., Docket No. 2005-0626-AIR-E on 10/27/2005 assessing $3,775 in administrative penalties with $755 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bollinger Houston, L.P., Docket No. 2005-0630-AIR-E on 10/27/2005 assessing $14,560 in administrative penalties with $2,912 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trans Health Management, Inc. dba Southwest Regional Medical Complex, Docket No. 2005-0665-PST-E on 10/27/2005 assessing $2,400 in administrative penalties with $480 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Production Company, L.P., Docket No. 2005-0667-AIR-E on 10/27/2005 assessing $3,475 in administrative penalties with $695 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Henrietta, Docket No. 2005-0683-PWS-E on 10/27/2005 assessing $665 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Insight Equity Acquisition Partners, LP, Docket No. 2005-0694-PST-E on 10/27/2005 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company, L.P., Docket No. 2005-0704-AIR-E on 10/27/2005 assessing $4,050 in administrative penalties with $810 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rock Solid Crushed Stone, Inc., Docket No. 2005-0724-WQ-E on 10/27/2005 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy Vancleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Goldthwaite, Docket No. 2005-0725-PWS-E on 10/27/2005 assessing $635 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Winkler Water Supply Corporation, Docket No. 2005-0726-PWS-E on 10/27/2005 assessing $323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hal Kilpatrick, II, Docket No. 2005-0743-IRR-E on 10/27/2005 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks & Wildlife Department, Docket No. 2005-0751-PWS-E on 10/27/2005 assessing $400 in administrative penalties with $80 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grinding and Sizing Company, Inc., Docket No. 2005-0773-AIR-E on 10/27/2005 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J H & Son, Inc. dba Holton Oil Company, Docket No. 2005-0787-PST-E on 10/27/2005 assessing $1,900 in administrative penalties with $380 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Econo Lube N'Tune, Inc., Docket No. 2005-0805-PST-E on 10/27/2005 assessing $3,325 in administrative penalties with $665 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FFP Operating Partners, L.P., Docket No. 2005-0807-PST-E on 10/27/2005 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Goodrich, Docket No. 2005-0820-PWS-E on 10/27/2005 assessing $350 in administrative penalties with $70 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Gas Services L.P., Docket No. 2005-0832-AIR-E on 10/27/2005 assessing $2,725 in administrative penalties with $545 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mission, Docket No. 2005-0851-PWS-E on 10/27/2005 assessing $1,313 in administrative penalties with $263 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks & Wildlife Department, Docket No. 2005-0885-PWS-E on 10/27/2005 assessing $600 in administrative penalties with $120 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda King-Zrubek, Enforcement Coordinator at (512) 239-0824, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Bannworth dba B & J Onion & Melon Company, Docket No. 2005-0898-MLM-E on 10/27/2005 assessing $1,600 in administrative penalties with $320 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alamo Concrete Products, Ltd., Docket No. 2005-0933-WQ-E on 10/27/2005 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Three Stars Aviation, L.L.C. dba Town & Country Airpark, Docket No. 2005-1047-PST-E on 10/27/2005 assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200505169
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2005

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Notice of District Petition

Notices mailed November 7, 2005

TCEQ Internal Control No. 10202005-D02; Joint Venture and Lennar Homes of Texas Land and Construction, Ltd. (Petitioners) filed a petition for creation of Montgomery County Municipal Utility District No. 107 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 349.8 acres located within Montgomery County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Conroe, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2811-05, effective September 8, 2005, the City of Conroe, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $11,000,000.

TCEQ Internal Control No. 09302005-D03; F.M. 1314 - Needham Road Joint Venture, a Texas Joint Venture (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 111 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 776.783 acres located in Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Conroe, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2805-05, effective July 28, 2005, the City of Conroe, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; and (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $79,500,000.

TCEQ Internal Control No. 09082005-D03; MERION 100, L.P. (Petitioner) filed a petition for creation of Walsh Ranch Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, JPMorgan Chase Bank, N.A., on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 102 acres located in Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Round Rock, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R-05-10-13-10H5, effective October 13, 2005, the

City of Round Rock, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $9,670,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200505167

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 9, 2005

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 19, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P. O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 19, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Craig Turner dba Turner Water Service; DOCKET NUMBER: 2005-0607-PWS- E; TCEQ ID NUMBERS: 0790190 and RN101243129; LOCATION: 531 Marilyn Street, Fresno, Fort Bend County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A), by failing to collect routine bacteriological samples at active service connections at a frequency based on the population served by the facility for the months of January 1, 2004 - December 31, 2004; 30 TAC §290.122(c)(2)(A), by failing to notify persons served by the facility of failure to collect bacteriological samples for the months of January 1, 2004 - December 31, 2004; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay public health service fees including late fees; PENALTY: $7,050; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Hussain Liaqat dba Stop N Drive 33; DOCKET NUMBER: 2004-1085-PST-E; TCEQ ID NUMBERS: 54324 and RN101729127; LOCATION: corner of Highway 90 and Farm-to-Market Road 770, Raywood, Liberty County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay petroleum storage tank (PST) fees; PENALTY: $3,150; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Jose Garcia dba Neighborhood Trucks and Auto Repair; DOCKET NUMBER: 2004-1998-AIR-E; TCEQ ID NUMBER: RN103009098; LOCATION: 7900 Mendez Street, Houston, Harris County, Texas; TYPE OF FACILITY: automotive repair business; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to

obtain a permit prior to constructing and operating a facility with surface coating operations and by failing to satisfy the conditions for exempt facilities; 30 TAC §115.422(1)(A) and THSC, §382.085(b), by failing to wash, rinse, and drain parts used in surface coating operations in an enclosed system or in a non-enclosed system with a solvent vapor pressure less than 100 millimeters of mercury at 68 degrees Fahrenheit and a drain leading to an enclosed reservoir; 30 TAC §115.421(a)(8)(B)(i), (iv), and (ix), and THSC, §382.085(b), by failing to comply with the volatile organic compound emission limits for primer, single stage topcoats, and wipe-down solutions used in vehicle refinishing; and 30 TAC §115.426(1)(B) and THSC, §382.085(b), by failing to maintain records of the quantity and type of each coating and solvent used at the site; PENALTY: $11,550; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(4) COMPANY: Marrice Hampton; DOCKET NUMBER: 2004-1052-MLM-E; TCEQ ID NUMBER: RN104222336; LOCATION: 12170 County Road 1121, Tyler, Smith County, Texas; TYPE OF FACILITY: solid waste dump; RULES VIOLATED: 30 TAC §328.60(a) and §330.4(a), and THSC, §361.112(a), by failing to obtain registration for a facility receiving or storing more than 500 scrap tires on the ground; 30 TAC §330.4(a), by failing to obtain authorization from the TCEQ prior to accepting or storing municipal solid waste; and 30 TAC §111.201, by failing to prevent outdoor burning of tires, brush, debris, and municipal solid waste; PENALTY: $17,500; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Mehmood Lakahani dba C-Store; DOCKET NUMBER: 2002-0751-PST-E; TCEQ ID NUMBERS: 0021877 and RN102360716; LOCATION: 110 North Story Road, Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records on site at the station and available for review; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct an annual pressure decay test on the Stage II vapor recovery system; 30 TAC §115.242(3)(A), (B), and (4) and THSC, §382.085(b), by failing to ensure that no gasoline leaks as detected by sampling, sight, sound, or smell existed anywhere in the dispensing equipment and by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to ensure that the TCEQ UST registration and self-certification form was submitted to the commission in a timely manner; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to install a method of corrosion protection for the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system and failing to ensure that all tanks were monitored for releases at a frequency of at least once every month; 30 TAC §334.10(b)(1)(B), by failing to provide PST tank delivery records upon request by the TCEQ; and 30 TAC §334.22(d) and TWC, §5.702 and §26.358(d), by failing to pay outstanding UST fees for Fiscal Years 1997 - 2004, along with associated late fees and interest; PENALTY: $17,340; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Vernco Construction, Inc.; DOCKET NUMBER: 2005-0080-WQ-E; TCEQ ID NUMBER: RN103012571; LOCATION: 10902 Industry Drive, San Antonio, Bexar County, Texas; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual industrial wastewater permit or a TPDES General Permit; and 30 TAC §335.4 and TWC, §26.121(a)(1), by allowing unauthorized discharges of industrial waste into or adjacent to water in the state; PENALTY: $10,200; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200505156
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 8, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 19, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P. O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 19, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Alto Corner Market, Inc.; DOCKET NUMBER: 2004-1662-PST-E; TCEQ ID NUMBERS: 45663 and RN101846525; LOCATION: 101 North Marcus, Alto, Cherokee County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of four petroleum underground storage tanks (USTs) for a one-year

period proceeding November 7, 2002; PENALTY: $4,280; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Aslam Mohammed dba One Stop Pantry; DOCKET NUMBER: 2003-0910-PST- E; TCEQ ID NUMBERS: 42381 and RN101433480; LOCATION: 6531 Watauga Road, Watauga, Tarrant County, Texas; TYPE OF FACILITY: retail service station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of USTs; PENALTY: $2,400; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; (512) 239-1320; REGIONAL OFFICE: Dallas- Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Lone Oak; DOCKET NUMBER: 2003-1336-MWD-E; TCEQ ID NUMBER: RN101920668; LOCATION: approximately 0.5 miles south of the intersection of United States (U.S.) Highway 69 and Farm-to-Market Road 1571 in Lone Oak, Hunt County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10760001 and Reporting Requirement 7c, by failing to provide written notification for effluent violations which exceeded the effluent limitation by more than 40% during August - December 2002 and January - March 2003; 30 TAC §305.125(5) and §317.3(a), TPDES Permit Number 10760001, Operational Requirement 1, by failing to maintain the pond embankments, the alternate power generator and Lift Station Number 5, and by failing to properly secure Lift Station Number 2; 30 TAC §305.125(1), TPDES Permit Number 10760001 Final Effluent Limitations and Monitoring Requirement 1, and TWC, §26.121, by failing to comply with permitted effluent limits for fecal coliform, five-day carbonaceous biochemical oxygen demand, pH, ammonia- nitrogen, dissolved oxygen (DO), total suspended solids, and flow; and 30 TAC §319.11(c), by failing to accurately calculate and report the daily average, daily maximum, single grab, minimum, and maximum values used in the monthly discharge monitoring reports; PENALTY: $18,213; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Lovelady; DOCKET NUMBER: 2003-1298-MWD-E; TCEQ ID NUMBERS: 10734-001 and RN102185543; LOCATION: approximately 0.5 miles southwest of the intersection of State Highway 19 and Farm-to-Market Road 1280, Lovelady, Houston County, Texas; TYPE OF FACILITY: domestic wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number 10734-001 Effluent and Monitoring Requirements, by failing to comply with its permitted effluent quality limitations; 30 TAC §305.125(1) and (5), §305.126(a), and TPDES Permit Number 10734-001, Permit Conditions Number 2.b and Operational Requirements Numbers 1 and 8, by failing to maintain units of conveyance; by failing to initiate plans for expansion or submit an engineering report to document a request for a waiver of the 75/90 rule requirement; by failing to properly maintain all units of treatment; by failing to maintain the flow measurement device to provide accurate readings; and 30 TAC §319.7(a) and (c) and TPDES Permit Number 10734-001, Monitoring and Reporting Requirements Number 3.b and 3.c, by failing to maintain pH calibration records and to record the name of the individual and the time that the pH measurements and flow readings were taken; PENALTY: $19,550; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Saint Jo; DOCKET NUMBER: 2004-0531-MWD-E; TCEQ ID NUMBERS: 10368-001 and RN103016226; LOCATION: approximately one mile southeast of the City of Saint Jo and approximately 1,000 feet south of U.S. Highway 82 on the north bank of Elm Fork of the Trinity River in Saint Jo, Montague County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §317.4(a)(8), by failing to conduct the annual test on the reduced pressure back flow assembly; and 30 TAC §305.125(2) and §305.63(a) and TWC, §26.121(a), by failing to submit a permit renewal application prior to the expiration of the existing TPDES Permit Number 10368-001 and continuing to discharge effluent to the Elm Fork of the Trinity River after expiration of the existing TPDES Permit Number 10368-001; PENALTY: $12,420; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Daniel Ramirez, Jr. dba Country Village Market; DOCKET NUMBER: 2005- 0376-PST-E; TCEQ ID NUMBERS: 71678 and RN102267184; LOCATION: 0.25 miles north of Mile 12.5 Road, Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by an accidental release arising from the operation of petroleum USTs; PENALTY: $1,070; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: El Paso Field Services, L.P.; DOCKET NUMBER: 2002-0951-AIR-E; TCEQ ID NUMBERS: NE01651 and RN100210277; LOCATION: 802 McKenzie Road, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 18614, Special Provision Number 12C, and Texas Health and Safety Code (THSC), §382.085(b), by failing to demonstrate compliance by providing any records to show catalytic converters on five compressor engines were being maintained in good working order and operated properly during normal facility operations; 30 TAC §116.115(b) and (c), TCEQ Air Permit Number 18614, General Provision Number 6 and Special Provision Numbers 1, 4, 5, and 11C, and THSC, §382.085(b), by failing to maintain the permitted pounds per hour (lbs/hr) emission rates for carbon monoxide (CO); and by failing to maintain the permitted lbs/hr emission rates for nitrogen oxide (NOx) as specified in the maximum allowable emissions rate table, by exceeding the horsepower operating limits for five engines and four turbines, by exceeding the NOx emission limits in parts per million for five engines, by exceeding the NOx emission limits in grams per horsepower for five engines, and by failing to demonstrate compliance with the required 75% CO removal efficiency in four engine catalytic converters, and by failing to maintain the control devices in good working order for calendar year 2001; 30 TAC §§101.20(1), 116.115(c), 122.143(4), and 122.512(b)(11), 40 Code of Federal Regulations (CFR) §60.334(b)(2), TCEQ Air Permit Number 18614, Special Provision Numbers 12E and 12G, General Operating Permit (GOP) Number O-00869, and THSC, §382.085(b), by failing to demonstrate compliance with the fuel monitoring requirements by not maintaining any records for five turbines for calendar year 2001, by failing to demonstrate compliance with the turbine load monitoring requirements, by not maintaining any records showing that loads for the same five turbines had been monitored and recorded at least

once per hour for each turbine in a manner that was representative of the maximum load during the hour for calendar year 2001; 30 TAC §116.115(c), TCEQ Air Permit Number 18614, Special Provision Number 13, and THSC, §382.085(b), by failing to submit the annual report of quarterly tests for five turbines and five engines for calendar year 2001; 30 TAC §101.6(b) (now 30 TAC §101.201), and THSC, §382.085(b), by failing to create a complete and final record of excess emission events; 30 TAC §116.115(c), TCEQ Air Permit Number 18614, Special Provision Number 1, and THSC, §382.085(b), by failing to obtain regulatory authority or to meet the demonstration requirements of 30 TAC §101.11 (now 30 TAC §101.222) for emissions resulting from excess emission events; 30 TAC §111.111(a)(4)(A)(ii), and THSC, §382.085(b), by failing to maintain a flare operation log for Emission Point Number (EPN) 7 for calendar year 2001; 30 TAC §§101.20(1), 116.115(c), 122.143(4), and 122.512(b), 40 CFR §60.8 and §60.335, TCEQ Air Permit Number 18614, Special Provision Number 2, GOP Number O-00869, and THSC, §382.085(b), by failing to conduct initial performance testing for EPN 1 to demonstrate compliance with testing and emissions requirements; 30 TAC §116.115(c), §116.116(a), TCEQ Air Permit Number 18614, SC Number 1, and THSC, §382.085(b), by failing to operate EPNs 5 and 7 exclusively as represented in the permit; 30 TAC §101.20(1), 40 CFR §60.486 and §60.635(a) and THSC, §382.085(b), by failing to demonstrate compliance by not maintaining any quarterly records for the de-ethanization tower and two heaters which contain equipment and components alleged by TCEQ to be in volatile organic compound (VOC) service and or alleged by TCEQ to be subject to 40 CFR Part 60, Subpart KKK during 2001; 30 TAC §101.20(1), 40 CFR §60.487 and §60.636(a), THSC, §382.085(b), by failing to demonstrate compliance with semi-annual reporting requirements by not submitting, during 2001, any reports for the de-ethanization tower and two heaters which allegedly contain equipment and components in VOC service that are allegedly subject to 40 CFR Part 60, Subpart KKK; 30 TAC §122.121 and §122.503 and THSC, §382.054 and §382.085(b), by failing to obtain federal operating authority by failing to revise GOP Number O-00869 to include the de-ethanization tower and two process heaters which contain equipment and components allegedly in VOC service that are allegedly subject to 40 CFR Part 60, Subpart KKK; 30 TAC §122.145(2), §122.146, GOP Number O-00869, and THSC, §382.085(b), by failing to disclose all deviations from applicable requirements on the Federal Operating Permit (FOP) compliance certifications for the certification periods of July 31, 2000 - July 30, 2001, July 31, 2001 - July 30, 2002, and July 31, 2002 - July 30, 2003, and by failing to submit the FOP deviation reports for the time periods of July 31, 2000 - January 30, 2001, July 31, 2001 - January 30, 2002, and July 31, 2002 - January 30, 2003; PENALTY: $202,400; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: eMag Solutions, LLC; DOCKET NUMBER: 2004-1626-AIR-E; TCEQ ID NUMBERS: RN100215573 and YB0006D; LOCATION: 1715 4th Street, Graham, Young County, Texas; TYPE OF FACILITY: magnetic tape manufacturing plant; RULES VIOLATED: 30 TAC §122.145(2)(C) and §122.146(2) and THSC, §382.085(b), by failing to submit a Title V Permit compliance certification and associated deviation reports; PENALTY: $7,800; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Jan Pate dba B D J's; DOCKET NUMBER: 2004-1243-PST-E; TCEQ ID NUMBERS: 71445 and RN102939162; LOCATION: Highway 84 West Loop 343, Rusk, Cherokee County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of three petroleum USTs; PENALTY: $3,150; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Maurice Rosalez; DOCKET NUMBER: 2005-0003-LII-E; TCEQ ID NUMBER: RN104455019; LOCATION: 2100 Center Drive, Vernon, Wilbarger County, Texas; TYPE OF FACILITY: landscaping and irrigation system installation; RULES VIOLATED: TWC, §37.003, Occupations Code, §1903.251, and 30 TAC §30.5(b) and §344.4(a), by failing to hold an irrigator's license prior to installing an irrigation system, including the connection of such system to a water supply while employed as a maintenance supervisor at the site on or about October 19, 2004 - October 25, 2004; PENALTY: $625; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: Rama Rao Mugili dba Oak Island Ice House; DOCKET NUMBER: 2004-1284- PST-E; TCEQ ID NUMBERS: 46039 and RN101197309; LOCATION: 2750 South Loop 1604 West, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs; PENALTY: $800; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233- 4480, (210) 490-3096.

(12) COMPANY: Regency Centers Corporation dba Time Mart 15; DOCKET NUMBER: 2005- 0632-PST-E; TCEQ ID NUMBERS: 74463 and RN101736379; LOCATION: 10910 Will Clayton Parkway, Humble, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Account Number 0060409U for Fiscal Year 2005; PENALTY: $2,100; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Safe Tire Disposal Corporation of Texas; DOCKET NUMBER: 2004-1027- MSW-E; TCEQ ID NUMBERS: 25965, 79504, 44104, and RN100734094; LOCATION: 3351 South Wyatt Road, Midlothian, Ellis County, Texas; TYPE OF FACILITY: scrap tire transportation, processing, and storage facility; RULES VIOLATED: 30 TAC §328.55(5), by failing to submit a new registration application to the executive director within ten days of a change in operations or management methods; 30 TAC §328.61(e), by failing to split, quarter, or shred tires at the facility within 90 days from the date of delivery of the tires to the facility; and 30 TAC §328.71(e), by failing to notify the executive director of a change in calculations of its cost estimate for closure of the facility and for financial as-

surance; PENALTY: $7,350; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Samuel Consulting, Inc., dba Circle Full Service Car Wash; DOCKET NUMBER: 2005-0392-PST-E; TCEQ ID NUMBERS: 28827 and RN101536969; LOCATION: 4711 Stonewall Street, Greenville, Hunt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and (b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to monitor the piping of the UST system in a manner designed to detect releases from a portion of the piping system; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to any common carrier, a valid, current delivery certificate before receiving fuel deliveries; PENALTY: $6,000; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Stewart & Stevenson Tactical Vehicle Systems, L.P.; DOCKET NUMBER: 2004-1886-IHW-E; TCEQ ID NUMBERS: 32050 and RN102411352; LOCATION: 5000 Interstate 10 West, Sealy, Austin County, Texas; TYPE OF FACILITY: motor vehicle coating facility; RULES VIOLATED: 30 TAC §335.2(b) and 40 CFR §270.1, by failing to properly dispose of hazardous waste at an authorized disposal site from April 15, 1998 - February 26, 2004; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct an adequate hazardous waste determination of the filter cake waste generated from the chrome coating of aluminum automobile parts; and 30 TAC §335.6(c), by failing to update the Notice of Registration with all solid waste streams and waste management units; PENALTY: $94,495; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: The City of Carl's Corner; DOCKET NUMBER: 2003-1372-PWS-E; TCEQ ID NUMBERS: 1090070 and RN101391852; LOCATION: 2100 Linda Road East, Carl's Corner, Hill County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the water within the distribution system at a minimum concentration of 0.2 milligrams per liter (mg/L) free chlorine; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine air-water-volume for its tank that has a greater than 1,000-gallon capacity; 30 TAC §290.42(i) (now 30 TAC §290.42(j)), by failing to ensure that all chemicals used in the treatment of water supplied by the facility conformed to American National Standards Institute/National Science Foundation Standard 60 for direct additives; 30 TAC §290.44(d)(5), by failing to provide sufficient valves and blowoffs so that necessary repairs could be made without undue interruption of service over any considerable area and for flushing the system when required; 30 TAC §290.41(c)(3)(B), by failing to provide well casing that extended a minimum of 18 inches above the natural ground surface; 30 TAC §290.109(c)(1)(B), by failing to monitor for microbial contaminants at locations specified in the facility's monitoring plan; 30 TAC §290.46(f)(2), by failing to make the facility's operating records accessible to the TCEQ investigator for review during inspections; 30 TAC §290.46(t), by failing to post a legible sign at the facility in plain view of the public providing the name of the water supply company and an emergency telephone number where a responsible official could be contacted; 30 TAC §290.46(m)(4), by failing to maintain all water storage facilities in a watertight condition; 30 TAC §290.46(h), by failing to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service; 30 TAC §290.41(c)(3)(K), by failing to provide the well casing vent with 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the discharge pipe of each well prior to any treatment; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains could be easily located during emergencies; 30 TAC §288.20(a) and §288.30(3), by failing to provide a copy of an adopted drought contingency plan for inspection upon request of the TCEQ investigator; 30 TAC §290.45(b)(1)(B)(iii), by failing to provide two service pumps having a total capacity of 2.0 gallons per minute per connection; and 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum water pressure of 35 pounds per square inch within the water distribution system; PENALTY: $6,248; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: The City of La Feria; DOCKET NUMBER: 2004-0314-MLM-E; TCEQ ID NUMBERS: RN101612646 and RN102449063; LOCATION: 1.7 miles south of the intersection of Farm-to-Market Road 506 and U.S. Highway 83, then west on Dodd Lane approximately 1,000 feet and 128 East Commercial Avenue, La Feria, Cameron County, Texas; TYPE OF FACILITY: wastewater treatment plant and fleet refueling facility; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control procedures at the facility; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i) and (ii), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the USTs; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to inspect and test for operability and adequacy of protection the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years; TWC, §26.3475(b) and (c)(1), and 30 TAC §334.50(b)(2)(B)(i)(II) and (b)(1)(A), by failing to monitor for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods prescribed for piping and tanks; TWC, §26.346(a) and 30 TAC §334.8(c)(4)(B), by failing to ensure the UST registration and self-certification form was fully and accurately completed and submitted to the TCEQ in a timely manner and by failing to renew the delivery certificate in a timely manner; TWC, §26.121, 30 TAC §305.125(1), and TPDES Permit Number WQ0010697001, Final Effluent Limitations and Monitoring Requirement Number 1 and Number 6, by failing to comply with the permitted effluent single grab biochemical oxygen demand five-day limitation of 100 mg/L, and by failing to comply with the permitted effluent minimum of 4.0 mg/L for DO; 30 TAC §305.125(1) and (5), §330.5(a), and TPDES Permit Number WQ0010697001, Operational Requirement Number 1, by failing to prevent the disposal of solid waste in violation of the Texas Solid Waste Disposal Act, or any regulations, rules, permit, license, or order of the commission, and by failing to ensure that the plant and all of its systems of collection treatment and disposal were properly operated and maintained; TWC, §26.121, 30 TAC §305.125(1), and TPDES Permit Number WQ0010697001, Permit Condition Number (4)(a)(ii), by failing to apply for a permit amendment for alterations or additions that could significantly change the nature or increase the quantity of pollutants being discharged; 30 TAC §305.125(1) and (5), §317.7(b), and TPDES Permit Number WQ0010697001, Operational Requirement Number 1, by failing to ensure that open valve boxes and pits were guarded by railings; and 30 TAC §305.125(1) and (5), §317.4(a)(8), and

TPDES Permit Number WQ0010697001, Operational Requirement Number 1, by failing to equip all potable water washdown hoses with atmospheric vacuum breakers located above the overflow level of the washdown area; PENALTY: $43,200; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: The City of Winfield; DOCKET NUMBER: 2003-0116-MLM-E; TCEQ ID NUMBERS: 12146-001, 2250003, and 10506; LOCATION: approximately 400 feet north of the Interstate 30 access road and 1,500 feet west of Farm-to-Market Road 1734, Winfield, Titus County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), §319.7(d), and TPDES Permit Number 12164-001 Monitoring and Reporting Requirement Number 1, by failing to submit the discharge monitoring reports; 30 TAC §305.125(1) and TPDES Permit Number 12164-001 Section III Reporting Requirements, by failing to submit an annual sludge report; 30 TAC §290.46(m)(1)(A), by failing to comply with water storage tank annual inspection requirements; 30 TAC §290.44(h)(4)(C), by failing to comply with the requirement to have back flow prevention test results for a school and water treatment plant available for review; 30 TAC §290.46, by failing to comply with the requirement to have service agreement records available for review; 30 TAC §290.110(c)(5)(A), by failing to have chlorine residual test records available for review; 30 TAC §290.46(f)(3)(E)(iv), by failing to have customer service inspection records for a convenience store under construction available for review; 30 TAC §290.46(e)(3)(A), by failing to have a certified operator holding a valid Grade D or higher Ground Water/Surface Water/Distribution operator's certificate; 30 TAC §290.109(c)(1)(B), by failing to develop a site sampling plan for the collection of bacteriological samples; 30 TAC §290.46(f), by failing to have records of monthly operations available for review; 30 TAC §290.46(n)(2), by failing to have a distribution map available for review; and 30 TAC §290.42(k), by failing to have a plant operations manual; PENALTY: $16,160; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535- 5100.

(19) COMPANY: United States Department of the Navy, Naval Air Station Kingsville; DOCKET NUMBER: 2002-0222-PST-E; TCEQ ID NUMBERS: 2411 and RN102376449; LOCATION: 554 McCain Street, Kingsville, Kleberg County, Texas; TYPE OF FACILITY: Navy Exchange facility with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1), by failing to make immediately available for inspection upon request by agency personnel all required records; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475, by failing to test a line leak detector at least once per year for performance and operational reliability; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the UST can be accepted; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit a petroleum storage tank self- certification form as required; PENALTY: $3,096.16; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200505155

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 8, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of November 1, 2005 through November 8, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

JO ANN ADAIR has applied for a renewal of TPDES Permit No. 13366-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,500 gallons per day. The facility is located approximately 1,000 feet east of Farm-to-Market Road 17, 4.5 miles north of the intersection of State Highway 182 and Farm-to-Market Road 17 (City of Alba), between Mustang Bay and Little Mustang Bay of Lake Fork Reservoir in Wood County, Texas.

KEITH BLAIR has applied for a renewal of TPDES Permit No. 12960-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1.0 mile south of the intersection of Farm-to-Market Toad 515 and Farm-to-Market Road 17; approximately 5.0 miles north of the intersection of Farm-to-Market Road 17 and State Highway 182 in Wood County, Texas.

CAPELA PROPERTIES, LLC. has applied for a renewal of TPDES Permit No. 13066-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The facility is located at 2421 Greens Road, approximately 0.25 mile east of the intersection of Greens Road and Aldine-Westfield Road, in the City of Houston in Harris County, Texas.

CITY OF COLEMAN has applied for a renewal of TPDES Permit No. 10150-003, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 50,000 gallons per day. The facility is located on North Mississippi Street in the City of Coleman in Coleman County, Texas.

D-BAR-B WATER-WASTEWATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014628001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located approximately 1/2 mile north of the point where Dowdy Ferry Road crosses the Trinity River, on the east side of Dowdy Ferry Road in Dallas County, Texas.

CITY OF GONZALES has applied for a major amendment to TPDES Permit No. 10488-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,500,000 gallons per day to an annual average flow not to exceed 2,250,000 gallons per day. The facility is located at the confluence of the Guadalupe River and Tinsley Creek, approximately 4,000 feet east of U.S. Highway 183, and approximately 5,000 feet south of U.S. Highway 90-A in Gonzales County, Texas.

CITY OF HAPPY has applied for a renewal of TPDES Permit No. 10183-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 77,000 gallons per day. The facility is located approximately 1/2 mile south of Farm-to-Market Road 1075 and 1/2 mile east of Interstate Highway 27, east of the City of Happy in Swisher County, Texas.

CITY OF JAMAICA BEACH has applied for a renewal of TPDES Permit No. 11033-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. The facility is located approximately 600 feet east of Bob Smith

Drive on Marina Drive within the boundaries of the City of Jamaica Beach in Galveston County, Texas.

CITY OF MATADOR has applied for a renewal of Permit No. 10111-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.8 miles northwest of the intersection of U.S. Highways 62 and 70 and Farm-to-Market Road 1380 and approximately 1.8 miles southwest of the intersection of Farm-to-Market Roads 1380 and 94 in Motley County, Texas.

MAVERICK COUNTY has applied for a renewal of TPDES Permit No. 13716-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 2,000 feet southeast of the intersection of U.S. Highway 277 and State Highway 131 in Maverick County, Texas.

MAXEY ROAD WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13503-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located on the east side of Gregdale Road approximately 300 feet south of the intersection of Gregdale Road and U.S. Highway 90 in Harris County, Texas.

MONARCH UTILITIES I L.P. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 14056-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 0.75 mile northwest of the intersection of State Highway 190 and the Trinity River and approximately 2.5 miles northeast of the intersection of State Highway 190 and Farm-to-Market Road 980 in San Jacinto County, Texas.

CITY OF NEW LONDON has applied for a renewal of TPDES Permit No. 12376-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located one mile southeast of the intersection of State Highway 42 and Farm-to-Market Road 918 in Rusk County, Texas.

PRESBYTERIAN MO RANCH ASSEMBLY has applied for a new permit, Proposed Permit No. WQ0014603001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via surface irrigation of 15 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 10 miles west of the City of Hunt, at the crossing of the North Fork Guadalupe River and Farm-to-Market Road 1340 in Kerr County, Texas. The plant site and disposal area are located in the drainage basin of the North Fork Guadalupe River in Segment No. 1817 of the Guadalupe River Basin.

WALLACE ALLEN RAYNOR has applied for a renewal of TPDES Permit No. 14438-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located 260 feet west of Farm-to-Market Road 3322 and approximately 5,000 feet north of the intersection of Farm-to-Market Road 3322 and State Highway 31, northwest of Kilgore in Gregg County, Texas

RED RIVER AUTHORITY OF TEXAS has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 11252-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The facility is located approximately 0.7 mile east of the intersection of State Highway 86 and U.S. Highway 287, east of the City of Estelline, and south of the Fort Worth and Denver Railroad in Hall County, Texas.

RIVER HILLS OWNERS ASSOCIATION, INC. has applied for a renewal of TPDES Permit No. 10961-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located adjacent to and northwest of the intersection of Farm-to-Market Road 691 and Farm-to-Market Road 131 in Grayson County, Texas.

SHERMAN WIRE COMPANY has applied for a renewal of TPDES Permit No. 13762-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located 4,200 feet west from State Highway 289 on US Highway 56, then 1,600 feet north from US Highway 56 on Gibbons, then 200 feet east in Grayson County, Texas.

TIMOTHY CRAIG STEENWYK has applied for a renewal of TPDES Permit No. 12368-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located 800 feet south and 1,600 feet west of the northwest corner of the Lee County Fairgrounds in Lee County, Texas.

UNION HILL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013885001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located approximately 0.26 miles southwest of the intersection of Farm-to-Market Road 2088 and Farm-to-Market Road 2454 in Upshur County, Texas.

THE UNIVERSITY OF TEXAS AT AUSTIN, which operates the University of Texas at Austin Municipal Separate Storm Sewer System (MS4), has applied for a renewal of NPDES Permit No. TXS000401. The draft permit authorizes storm water point source discharges to surface water in the state from the University of Texas Municipal Separate Storm Sewer System (MS4). This permit will be renewed as TPDES Permit No. WQ0004704000. The MS4 is located in the City of Austin, in Travis County, Texas

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

MONARCH UTILITIES I L.P. has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the hauling of sludge from the Harbor Point Wastewater Treatment Facility to the Windermere Wastewater Treatment Facility, TPDES Permit No. WQ0011931001. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 0.25 mile north of Farm-to-Market Road 356 and approximately 0.4 mile west of the intersection of Farm-to-Market Road 356 and Farm-to-Market Road 355 in Trinity County, Texas.

MONARCH UTILITIES I L.P. has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to include authorization for hauling of sludge from the Blue Water Cove Wastewater Treatment Facility to the Windermere Wastewater Treatment Facility, TPDES Permit No. WQ0011931001. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located east and adjacent to U.S. Highway 190 in the Blue Water Cove Subdivision and approximately 6,500 feet northeast of the intersection of U.S. Highway 190 and State Highway 980 in San Jacinto County, Texas.

TRD-200505168

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2005

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Notice of Water Rights Application

Notice mailed November 7, 2005:

APPLICATION NO. 5889; TXU Mining Company LP, 1601 Bryan Street, Dallas, Texas 75201- 3411, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code 11.121 and TCEQ Rules 30 Texas Administrative Code 295.1, et seq. Applicant seeks authorization to divert and use not to exceed 250 acre-feet of water per year within the Upper Martin Creek Watershed area for lignite surface mining (dust suppression, construction, and miscellaneous mining activities) purposes in the Martin Creek Lignite Mining Area (LMA) in Panola and Rusk Counties, Texas. The water will be diverted from multiple diversion points located in the watersheds within the boundary of the Martin Lake LMA at or upstream of twenty-five (25) proposed diversion points at a maximum combined diversion rate not exceed 4.456 cubic-feet-per-second (2,000 gallons-per-minute). The proposed diversion points are located in Panola County, unless otherwise stated, on various tributaries to Martin Creek, tributary of the Sabine River, Sabine River Basin. For a complete description of the diversion points, view the complete notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. Applicant also seeks authorization to maintain two existing reservoirs impounding a combined total of 983.81 acre-feet of water for domestic and livestock purposes after the cessation of mining activity in the year 2014. The two on-channel reservoirs are located approximately 12.5 miles northwest of Carthage in Panola County. For a complete description of the reservoirs, view the complete notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. Ownership of the mining rights in TXU Mining Company LP's Upper Martin Creek Watershed Portion in the Martin Lake LMA is held under multiple mining leases as evidenced by warranty deeds and leases filed in the application filed with the Texas Railroad Commission and in the Deed Records of Rusk and Panola Counties, Texas. The Commission will review the application as submitted by the applicant(s) and may or may not grant the application as requested. The application and required fees were received on March 18. Additional information was received on April 25, June 8, August 31, and October 12, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 2, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200505166
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2005

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Golden Crescent Workforce Development Board

Request for Proposals

The Golden Crescent Workforce Development Board will release its Request for Proposals for program monitoring services on November 18, 2005. The deadline for response to this procurement is 5:00 p.m., December 30, 2005. A complete set of specifications may be obtained at 120 South Main, Suite 501, Victoria, Texas or by calling (361) 576-5872.

TRD-200505119
Laura Sanders
Executive Director
Golden Crescent Workforce Development Board
Filed: November 7, 2005

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Texas Health and Human Services Commission

Public Notice--Intent to Submit an Amendment

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to revise the state plan for rehabilitative services and the Rate Determination for Rehabilitative Services. The Texas Department of State Health Services (DSHS) will no longer reimburse qualified providers for rehabilitative counseling and psychotherapy provided to Medicaid eligible persons with mental illness. This does not represent an elimination of mental health services, but instead, mental health service benefits will be covered through a different Medicaid program.

The proposed amendment is estimated to represent no significant financial impact to the state or the federal budgets for state fiscal years 2006 - 2007. The cost associated with rehabilitative counseling will move to the mental health counseling benefit covered by the Medicaid program.

The anticipated date of completion for the proposed amendment to the state plan is December 1, 2005. At that time, copies of the

proposed amendment will be made available to interested parties by contacting Gilbert Estrada, Policy Analyst with Medicaid/CHIP Division, at the Health and Human Services Commission, 1100 West 49th Street, MC-H600, Austin, Texas 78758-3160, or by e-mail at gilbert.estrada@hhsc.state.tx.us. Copies of the proposal also will be made available for public review in December 2005 at the local offices of the Department of Aging and Disability Services (formerly the Texas Department of Human Services).

TRD-200505162
Elizabeth LaMair
Assistant General Counsel
Texas Health and Human Services Commission
Filed: November 8, 2005

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Department of State Health Services

Notice of Amendment 37 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 37 provides that the licensee shall comply with the requirements described in the department letter dated October 24, 2005, and attached document entitled "Increased Controls for Licensees that Possess Sources Containing Radioactive Material Quantities of Concern." This license amendment is issued in response to a letter from the U.S. Nuclear Regulatory Commission, dated September 7, 2005, and signed by Charles L. Miller.

The department has determined that the amendment of the license and the terms of conditions provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of 25 Texas Administrative Code (TAC) Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing, upon written request, within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 TAC §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday - Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200505113
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 7, 2005

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Notice of Amendment 47 to the Radioactive Material License of Nuclear Sources and Services, Inc., dba NSSI/Sources and Services, Inc.

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it has amended Radioactive Material License Number L01811 issued to Nuclear Sources and Services, Inc., dba NSSI/Sources and Services, Inc., located at 5711 Etheridge in Houston, Texas.

Amendment number 47 provides that the licensee shall comply with the requirements described in the department letter dated October 24, 2005, and attached document entitled "Increased Controls for Licensees that Possess Sources Containing Radioactive Material Quantities of Concern." This license amendment is issued in response to a letter from the U.S. Nuclear Regulatory Commission, dated September 7, 2005, and signed by Charles L. Miller.

The department has determined that the amendment of the license and terms of conditions provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of 25 Texas Administrative Code (TAC) Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing, upon written request, within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 TAC §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday - Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200505114
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 7, 2005

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Texas Department of Insurance

Company Licensing

Application to change the name of NATIONAL INSURANCE UNDERWRITERS to NATIONAL INSURANCE UNDERWRITERS COMPANY, a foreign fire and/or casualty company. The home office is in Little Rock, Arkansas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200505185
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 9, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of TEXAS HEALTHCARE FOUNDATION, L.C. to TEXAS HEALTHCARE FOUNDATION, INC., a domestic third party administrator. The home office is LEWISVILLE, TEXAS.

Application to change the name and home office of CSC HEALTHCARE, INC, EL SEGUNDO, CALIFORNIA to DST HEALTH SOLUTIONS, INC, a foreign third party administrator. The home office is EL DORADO HILLS CALIFORNIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200505188
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 9, 2005

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Texas Lottery Commission

Instant Game Number 628 "Lucky Cherry Slots"

1.0. Name and Style of Game.

A. The name of Instant Game Number 628 is "LUCKY CHERRY SLOTS." The play style is "key symbol match with auto win."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 628 shall be $1.00 per ticket.

1.2. Definitions in Instant Game Number 628.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: DIAMOND SYMBOL, STAR SYMBOL, BANANA SYMBOL, BELL SYMBOL, MELON SYMBOL, POT OF GOLD SYMBOL, HORSESHOE SYMBOL, DOLLAR SIGN SYMBOL, GRAPE SYMBOL, SEVEN SYMBOL, CHERRY SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, and $1,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 628 - 1.2D

PLAY SYMBOL	CAPTION
DIAMOND SYMBOL	DMD
STAR SYMBOL	STR
BANANA SYMBOL	BNA
BELL SYMBOL	BEL
MELON SYMBOL	MEL
POT OF GOLD SYMBOL	GLD
HORSESHOE SYMBOL	HSH
DOLLAR SIGN SYMBOL	DLR
GRAPE SYMBOL	GRP
SEVEN SYMBOL	SVN
CHERRY SYMBOL	WIN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 628 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize--A prize of $40.00 or $100.

I. High-Tier Prize--A prize of $1,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (628), a seven digit pack number, and a three digit ticket

number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 628-0000001-001.

L. Pack--A pack of "LUCKY CHERRY SLOTS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "LUCKY CHERRY SLOTS" Instant Game Number 628 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY CHERRY SLOTS" Instant Game is determined once the latex on the ticket is scratched off to expose 20 Play Symbols. If a player matches three identical play symbols within a game the player wins the prize shown for that game. If a player reveals a cherry play symbol the player wins the prize shown for that game instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 20 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning games on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The auto win symbol will never appear more than once on ticket.

2.3. Procedure for Claiming Prizes.

A. To claim a "LUCKY CHERRY SLOTS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the

Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY CHERRY SLOTS" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY CHERRY SLOTS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY CHERRY SLOTS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY CHERRY SLOTS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 13,200,000 tickets in the Instant Game Number 628. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 628 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,531,200	8.62
$2	580,800	22.73
$4	369,600	35.71
$5	105,600	125.00
$10	79,200	166.67
$20	52,800	250.00
$40	24,750	533.33
$100	1,595	8,275.86
$1,000	220	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 628 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 628, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200505117
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 7, 2005

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Manufactured Housing Division

Notice of Administrative Hearing

Tuesday, November 22, 2005, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Amerihomes of Texas, Inc. dba Hacienda Homes to hear alleged violations of Section 1201.151 of the Act and Section 80.124 of the Rules by failing to refund a deposit given by a consumer within the required time frame of 15 (fifteen) days. SOAH 332-06-0394. Department MHD2005001066-LRV.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, james.hicks@tdhca.state.tx.us

TRD-200505049
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: November 3, 2005

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience and Necessity for Service Area Boundaries within Sutton County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 2, 2005, for service area exception within Sutton County, Texas.

Docket Style and Number: Joint Application of Pedernales Electric Cooperative, Incorporated and Southwest Texas Electric Cooperative, Incorporated for Service Area Exception within Sutton County. Docket Number 31991.

The Application: Pedernales Electric Cooperative, Incorporated (PEC) and Southwest Texas Electric Cooperative, Incorporated (SWTEC) requested a boundary exception to allow PEC to provide electric service to a single customer, Mr. Ryon West. SWTEC has agreed to the proposed boundary exception between the two companies because PEC has facilities closest to the site.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 28, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by

phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31991.

TRD-200505057
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2005

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Notice of Application for a Certificate of Convenience and Necessity for Service Area Boundary Exception within Dallas County

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 4, 2005, for service area exception within Dallas County, Texas.

Docket Style and Number: Application of Garland Power & Light for a Certificate of Convenience and Necessity for Service Area Boundary Exception within Dallas County. Docket Number 31999.

The Application: Garland Power & Light (Garland) has requested that TXU Electric Delivery Company (TXU) agree to a service area exception to allow Garland to provide service to a single customer, Quick Trip Service Station. TXU has agreed to the proposed boundary exception because Garland has facilities closest to the site.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 28, 2005 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31999.

TRD-200505159
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2005

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on November 1, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P., doing business as SBC Texas, to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary of the Liberty Hill Exchange (SBC Texas) and the Bertram Exchange (Verizon). Docket Number 31984.

The Application: This minor boundary amendment is being requested to revise the boundary between the Liberty Hill Exchange of SBC Texas and the Bertram Exchange of Verizon Southwest (Verizon). The proposed boundary amendment will realign the boundary between SBC Texas and Verizon in order to allow all the residents in the Post Oak Ranch subdivision to be in the serving area of a single holder of a certificate of convenience and necessity. Verizon has agreed to relinquish its portion of this subdivision to SBC Texas.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by November 28, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31984.

TRD-200505056
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2005

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on November 7, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. (GVTC) to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary of the Balcones Exchange (GVTC) and the Helotes Exchange (SBC Texas). Docket Number 32009.

The Application: This minor boundary amendment is being requested to revise the boundary between the Balcones Exchange of GVTC and the Helotes Exchange of Southwestern Bell Telephone, LP d/b/a SBC Texas (SBC Texas). The proposed boundary amendment will allow GVTC to serve all residents in the Anaqua Springs subdivision. SBC Texas has agreed to transfer a portion of its Helotes Exchange to GVTC's service area.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by November 28, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32009.

TRD-200505160
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2005

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on November 7, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. (GVTC) to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary of the Rocky Creek Exchange (GVTC) and the Smithville Exchange (SBC Texas). Docket Number 32010.

The Application: This minor boundary amendment is being requested to revise the boundary between the Rocky Creek Exchange of GVTC and the Smithville Exchange of Southwestern Bell Telephone, LP d/b/a

SBC Texas (SBC Texas). The proposed boundary amendment will allow GVTC to serve all residents in the Vista Ranch subdivision. SBC Texas has agreed to transfer a portion of its Smithville Exchange to GVTC's service area.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by November 28, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32010.

TRD-200505161
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2005

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 1, 2005, WilTel Local Network, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60346. Applicant intends to reflect a change in ownership/control.

The Application: Application of WilTel Local Network, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31979.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 23, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31979.

TRD-200505052
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2005

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 1, 2005, VarTec Telecom, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60252. Applicant intends to reflect a change in ownership/control, and change its name to Comtel Telcom Assets L.P., doing business as VarTec Telecom, conducting business under the trade name of VarTec Telecom.

The Application: Application of VarTec Telecom, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31980.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 23, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31980.

TRD-200505053
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2005

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 1, 2005, Excel Telecommunications, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60228. Applicant intends to reflect a change in ownership/control, and change its name to Comtel Telcom Assets L.P., doing business as Excel Telecommunications, conducting business under the trade name, Excel Telecommunications.

The Application: Application of Excel Telecommunications, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31981.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 23, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31981.

TRD-200505054
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2005

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Notice of Petition for Declaratory Order

Notice is given to the public of a petition for declaratory ruling filed with the Public Utility Commission of Texas on November 3, 2005, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §35.061 (Vernon 1998 & Supp. 2005) (PURA).

Docket Style and Number: Petition of Exxon Mobil Corporation for Declaratory Ruling Regarding Application of CenterPoint Energy Houston Electric, LLC Competition Transition Charges and Transition Charges, Docket Number 31993.

The Application: Exxon Mobil requests that the Commission issue a declaratory order that confirms the exempt status of the 45 MW of on-site generation. Exxon Mobil states that such a declaration would determine that the upgraded on-site generation capacity remains exempt from stranded cost recovery in an amount equal to the capacity that was in service and exempt at the time of adoption of Senate Bill 7 in 1999. Exxon Mobil makes clear that it does not seek to reduce the amount of its stranded cost payments to CenterPoint Energy below that level which would have applied without the upgrade of its on-site generation at the Baytown Complex, but that there should be no increase in stranded cost payment attributable to the upgrade of its historic on-site generation. Exxon Mobil requests that the commission grant its petition specifying that the technology upgrades to the 45 MW of installed

on-site generation capacity do not subject the Baytown Complex's energy use associated with that capacity to stranded cost charges under CenterPoint Energy's Schedule TC, Schedule TC2, or Rider CTC.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 31993.

TRD-200505172
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 9, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on November 1, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Verizon Southwest's (Verizon) request for an additional NXX code to satisfy the business requirements of the Beach City, Texas Rate Center.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources - Beach City, Texas Rate Center. Docket Number 31985.

The Application: Verizon submitted an application to the Pooling Administrator (PA) to provide it with an additional NXX code to satisfy the business requirements of the Beach City, Texas Rate Center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 28, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31985.

TRD-200505055
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2005

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Notice of Proceeding for 2005 Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2005 compliance proceeding initiated by the Public Utility Commission of Texas (commission) for each telecommunications provider receiving Texas universal service fund (TUSF) money to file a compliance affidavit attesting that the money from the fund has been used in a manner that is consistent with the purposes provided by PURA §56.021.

Docket Title and Number: Compliance Affidavit Attesting to Proper Use of TUSF Pursuant to PURA §56.029(g). Project Number 31952.

The commission initiated this proceeding pursuant to the Public Utility Regulatory Act §56.029(g). Under PURA §56.029(g) each telecommunications provider receiving universal service fund money shall file with the commission, not later than December 31, 2005, an affidavit attesting that the money from the fund has been used in a manner that is consistent with the purposes provided by §56.021. This requirement is applicable to every eligible telecommunications provider (ETP) receiving support from the TUSF.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by November 28, 2005. Requests for further information should be mailed to the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7390 or toll-free at 1-888-782-8477 extension 6-7390. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. Persons contacting the commission regarding this certification proceeding should refer to Project Number 31952.

TRD-200505058
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2005

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Public Notice of Proceeding to Review Policies and Procedures Related to Exceptional Storm Damage Costs Caused by Hurricane Rita

On September 24, 2005, Hurricane Rita struck the Texas Gulf Coast area causing extensive damage to property and loss of electric power in large areas of Texas. As a result of the hurricane, Entergy Gulf States, Inc. (EGSI) suffered extensive damages to its facilities, particularly its transmission and distribution facilities that are necessary to provide service to customers. EGSI worked to repair the damage to its system on an expedited basis and, in so doing, incurred expenses that it has reported are in the hundreds of millions of dollars. EGSI asserts that these expenditures have adversely affected its cash flow and may have an impact on its credit ratings.

Past decisions by the Public Utility Commission of Texas (Commission) have allowed utilities to revise their rates to recover, over a period of years, the extraordinary expenses created by major hurricanes. However, pursuant to Public Utility Regulatory Act (PURA) §39.452, EGSI is unable to request an increase in its base rates until June 30, 2007. The expenses incurred in 2005 as a result of Hurricane Rita would not be part of the test year expenses used to determine EGSI's rates in that proceeding. Because the inability to recover these expenses could adversely affect EGSI and potentially impact its ability to provide reliable service to its customers, the Commission has initiated a new project, Project Number 32003, designed to inquire into the level of EGSI's costs related to Hurricane Rita and the methods that might be used to permit EGSI to recover such costs. The Commission finds that such an inquiry is necessary in order to assure that the public interest in the provision of safe and reliable electric service at just and reasonable rates is maintained.

As a part of Project Number 32003, the staff of the Commission is requesting that EGSI provide the following information:

1. An estimate of the costs it has incurred in restoring electric service to all parts of its Texas service territory after Hurricane Rita, including a breakdown of capital expense vs. maintenance expense and a breakdown indicating whether the expenses are related to generation, transmission, distribution or other plant.

2. An estimate of the amount and source of any funds that could be used to recover the costs incurred, including but not limited to any

self-insured disaster fund, insurance proceeds, funds from the Federal Emergency Management Agency (FEMA), and funds, contributions or concessions from any other sources.

3. A preliminary report on the impact, if any, to EGSI's credit ratings caused by the costs it has incurred due to Hurricane Rita and the steps that EGSI is taking to maintain its rating above investment-grade.

4. An estimate of a date certain by which time EGSI would be able to file a report with a final accounting of the information requested in Question Numbers 1, 2 and 3, above.

5. Identification of any ratemaking treatments that would provide a source of funds to cover the reasonable cost of any repairs of extraordinary storm damage.

6. Identification of any legislative or rule changes that would be necessary to address the recovery of the costs of any extraordinary storm damage.

7. Identification of what proceedings, if any, the Commission should undertake in order to quantify or address the recovery of the cost of any extraordinary storm damage.

Staff requests that EGSI file the requested information in this project by Wednesday, November 16, 2005. The Commission also invites comments on Question Numbers 5 - 7 from other interested persons. Such comments should be filed in this project by Tuesday, November 29, 2005. Written comments concerning this project may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All responses should reference Project Number 32003.

Questions concerning the workshop or this notice should be referred to Patrick J. Sullivan, Staff Attorney, Legal Division, (512) 936-7125. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200505158
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2005

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Texas State Soil and Water Conservation Board

Notice of Public Hearing

The Texas State Soil and Water Conservation Board (TSSWCB) will conduct a public hearing November 17, 2005 at 11:00 a.m. or upon adjournment of the State Soil and Water Conservation Board meeting, whichever is later, in Temple at the Texas State Soil and Water Conservation Board State Office Hearings Room, 311 North 5th Street to receive comments from the public and from soil and water conservation districts on the State Brush Plan.

The public hearing is being held under authority of §203.051 and §203.052 of the Agriculture Code of Texas.

The Brush Plan may be reviewed and downloaded from the TSSWCB website, URL address http://www.tsswcb.state.tx.us.

Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed plan should include appropriate sections, subsections, page numbers, paragraphs, and etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed plan should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Dawn Heitman, Public Information/Human Resources Office, 311 North 5th Street, Temple, Texas 76501, (254) 773-2250, extension 227 at least two working days prior to the hearing so that appropriate services can be provided.

Written comments on the proposed plan may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503.

TRD-200505157
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: November 8, 2005

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Stephen F. Austin State University

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide environmental assessments for projects as requested. The Notice of Availability was published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5870).

The contract was awarded to Hydrex, 1128 N.W. Stallings, Nacogdoches, Texas 75964-3428, for an amount not to exceed $45,000.

The beginning date of the contract is October 1, 2005 and the ending date is January 1, 2006. Further consulting services may again be sought after this period of time.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

For further information, please call (936) 468-4037.

TRD-200505108
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: November 7, 2005

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Notice of Consultant Contract Renewal

Stephen F. Austin State University, Nacogdoches, Texas, intends to renew a contract for creative services with AMS Production Group,16986 N. Dallas Parkway, Dallas, Texas 75248.

The firm will produce and place two 30-second television commercials with the intent of increasing awareness among high school students who are prospective students of the University and influencers of such

students. The firm will incorporate recent research and recently developed brand positioning and creative concepts into the commercials.

The firm will provide services to the University beginning on or about December 7, 2005 and continuing through August 31, 2006, for the estimated amount of $40,000. The contract may be extended for three additional one-year periods ending August 31, 2009, solely at the University's discretion based on terms mutually agreed to by the University and AMS at the time of the extension.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Susan Hammons, Director of Public Affairs, Stephen F. Austin State University, P.O. Box 6100, SFA Station, Nacogdoches, TX 75962; E-mail: hammonsms@sfasu.edu; fax (936) 468-1732; phone (936) 468-2041.

TRD-200505062
R. Yvette Clark
General Counsel
Stephen F. Austin University
Filed: November 4, 2005

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Texas A&M University, Board of Regents

Request for Proposal

The Texas A&M University System seeks consulting proposals from individuals to provide guidance in the development of information technology strategic plans and implementation alternatives for The Texas A&M University System.

Information may be obtained by contacting:

B. J. Crain, Associate Vice Chancellor, The Texas A&M University System, A&M System Building, 200 Technology Way, Suite 2003, College Station, Texas 77845, or e-mail at bjcrain@tamu.edu.

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Proposals must be received on or before 2:00 p.m., December 2, 2005.

TRD-200505187
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: November 9, 2005

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The University of Texas System

Notice of Intent to Amend Consulting Contract

The University of Texas Southwestern Medical Center at Dallas will be amending a major consulting contract awarded for a project to provide the development of a comprehensive clinical strategic plan. Additional funding in the amount of $32,000 is necessary to compensate the consultant for personnel costs incurred to perform a function that was to have been performed by a U. T. Southwestern analyst that was not dedicated to the project as anticipated. The award for the consultant's services was made to The Chartis Group after a review of competitive sealed proposals that resulted in the best value to the University. The amendment is required in order to make final payment on the project which has been completed.

As required by the provisions of *Texas Government Code*, Chapter 2254, prior to amending its contract with The Chartis Group, U. T. Southwestern Medical Center - Dallas is posting this Notice of Intent to Amend.

Scope of Work:

The Chartis Group has developed various deliverables including a Stakeholder Interview Survey Tool and Analysis Process, development of processes for UT Southwestern's Health System Planning Team to be involved in the clinical services planning process, the development of an implementation plan for a minimum of one year, and a comprehensive Strategic Plan Document that provides a road map for 3-5 years, including implementation workplans and infrastructure capital investments.

Because only the contract amount is being amended and no further services are to be performed, no additional offers to perform the consulting services will be accepted.

Finding of Fact:

The President of U. T. Southwestern Medical Center - Dallas has made a finding that the additional payment for the consulting services are necessary. U. T. Southwestern Medical Center - Dallas did not have the in-house expertise to complete this project.

Questions:

Questions concerning this notice should be directed to Trish Smith, Associate Vice President for Health System Planning, The University of Texas Southwestern Medical Center at Dallas, 5323 Harry Hines Blvd, Dallas, Texas, 75390-9131, (214) 648-9986, trish.smith@utsouthwestern.edu.

TRD-200505183
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: November 9, 2005

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Houston, P. O. Box 131927, Houston, Texas, 77219-1927, received October 3, 2005, application for financial assistance in the amount of $46,345,000 from the Clean Water State Revolving Fund.

City of Pharr, 118 South Cage, Pharr, Texas, 78577, received September 12, 2005, application for financial assistance in the total amount of $43,000,000 from the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund.

Travis County Water Control and Improvement District No. 17, 3812 Eck Lane, Austin, Texas, 78734, received September 1, 2005, application for financial assistance in the amount of $11,610,000 from the Texas Water Development Funds.

City of Roma, 77 Convent Street, Roma, Texas, 78584, received October 10, 2005, application for an increase in financial assistance in the amount of $2,146,000 grant/loan from the Economically Distressed Areas Program.

East Rio Hondo Water Supply Corporation, P.O. Box 621, Rio Hondo, Texas, 78583, received September 6, 2005, application for financial assistance in the amount of $4,150,000 from the Rural Water Assistance Fund.

Red Oak, P. O. Box 393, Red Oak, Texas, 75154-0393, received June 22, 2005, application for financial assistance in an amount not to exceed $30,000 from the Flood Mitigation Assistance Planning Fund.

Wharton County, 309 East Milam, Wharton, Texas, 77488, received June 23, 2005, application for financial assistance in an amount not to exceed $50,000 from the Flood Mitigation Assistance Planning Fund.

TRD-200505186

Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Filed: November 9, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).